



SECTION 42A REPORT TREATY SETTLEMENT LAND OVERLAY

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List of Abbreviations

Table 1: List of Submitters and Abbreviations of Submitters' Names

Submitter Number	Abbreviation	Full Name of Submitter
S486	TROW	Te Rūnanga o Whaingaroa
S339	TACD Ltd	Te Aupōuri Commercial Development Ltd
S498	TRAION	Te Rūnanga Ā Iwi O Ngāpuhi
S559	TRONR	Te Rūnanga o Ngāti Rēhia
S390	TRONT Trust	Te Rūnanga o NgaiTakoto Trust
S512	FENZ	Fire and Emergency New Zealand
S159	Horticulture NZ	Horticulture New Zealand
S516	Ngā Tai Ora	Ngā Tai Ora – Public Health Northland
S561	Kāinga Ora	Kāinga Ora Homes and Communities
S368	FNDC	Far North District Council
S359	NRC	Northland Regional Council
S344	Paihia Properties	Paihia Properties Holdings Corporate Trustee Limited and UP Management Ltd
S363	Foodstuffs	Foodstuffs North Island Limited
S393	ToJ#2 Trust	Trustees of Jett #2 Trust
S511	Forest & Bird	Royal Forest and Bird Protection Society of New Zealand



S529	CN Trust	Carbon Neutral Trust
S427	KR Assoc.	Kapiro Residents Association
S442	KC Trust	Kapiro Conservation Trust
S338	Our KCC Trust	Our Kerikeri Community Charitable Trust
S521	VKK	Vision Kerikeri (Vision for Kerikeri and Environs, VKK)
S148	Summit	Summit Forests New Zealand Ltd
S483	TE Ltd	Top Energy Ltd
S356	NZTA	Waka Kotahi NZ Transport Agency

Note: This table contains a list of submitters relevant to this topic which are abbreviated and does not include all submitters relevant to this topic. For a summary of all submitters please refer to Section 5.1 of this report (overview of submitters). Appendix 2 to this Report also contains a table with all submission points relevant to this topic.

Table 2: Other abbreviations

Abbreviation	Full Term
FNDC	Far North District Council
NPS	National Policy Statement
PDP	Proposed District Plan
RMA	Resource Management Act
RPS	Regional Policy Statement



1 Executive summary

1. The Far North Proposed District Plan (“PDP”) was publicly notified in July 2022. The Treaty Settlement Land Overlay Chapter is in the General District-Wide Matters section of the PDP.
2. 28 original submitters (with 94 individual submission points) and 30 further submitters (with 182 individual submission points) were received on the Treaty Settlement Land overlay chapter. 29 original submission points indicated general support for the provisions to be retained as notified, 23 submission points indicated support in part, with changes requested, whilst 26 submission points opposed the provisions. 16 submission points have not stated whether they support / support in part or oppose.
3. The submissions can largely be categorised into several key themes:
 - Submissions on the Objectives in the chapter.
 - Submissions on the Policies in the chapter.
 - Submissions on the Rules in the chapter.
 - Submissions on the Standards in the chapter.
 - Submissions on the General / Plan content / Miscellaneous in the chapter.
 - Submissions on Mapping in the chapter.
 - Submissions on Notes and Applications Subject to Multiple Provisions in Part 1 and Introduction and General Provisions / How the Plan Works / General Approach in the chapter.
4. This report has been prepared in accordance with Section 42A of the Resource Management Act (“RMA”) and outlines recommendations in response to the issues raised in submissions. This report is intended to both assist the Hearings Panel to make decisions on the submissions and further submissions on the PDP and provide submitters with an opportunity to see how their submissions have been evaluated, and to see the recommendations made by officers prior to the hearing.
5. The key changes recommended in this report relate to:
6. Amendments to objectives of the Treaty Settlement Land overlay chapter.
 - Amendments to policies of the Treaty Settlement Land overlay chapter.
 - Amendments to rules of the Treaty Settlement Land overlay chapter.
 - Amendments to standards of the Treaty Settlement Land overlay chapter.
 - Amendments to mapping in Treaty Settlement Land overlay chapter.
 - Amendments to Notes in Treaty Settlement Land overlay chapter.



- Amendments to Part 1 Introduction and General Provisions / How the plan works / General approach / Applications Subject to Multiple Provisions.

2 Introduction

2.1 Author and qualifications

7. My full name is Theresa Annetta Burkhardt and I am a Senior Policy Planner in the District Planning Team at Far North District Council.
8. I hold the qualification of Master of Planning Practice from the University of Auckland, Waipapa Taumata Rau. I am a full member of the New Zealand Planning Institute.
9. I have 15 years' experience in planning and resource management including policy development, formation of plan changes and associated s.32 assessments; s.42a report preparation and associated evidence; the preparation of Environment Court evidence; and the processing of resource consent applications. During this time, I have also developed specialist knowledge and understanding of Treaty Settlement processes in the district. I have recently completed the Making Good Decisions Foundation Course and obtained certification to sit as an accredited member of a hearings panel.

2.2 Code of Conduct

10. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
11. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners ("Hearings Panel").

2.3 Expert Advice

12. In preparing this report no expert advice was sought or required.

3 Scope/Purpose of Report

13. This report has been prepared in accordance with Section 42A of the Resource Management Act to:
 - a) assist the Hearings Panel in making their decisions on the submissions and further submissions on the Proposed District Plan; and
 - b) provide submitters with an opportunity to see how their submissions have been evaluated, and the recommendations being made by officers, prior to the hearing.



14. This report responds to submissions on the Treaty Settlement Land overlay chapter and the Treaty Settlement Land overlay in the GIS maps.
15. Wherever possible, I have provided a recommendation to assist the Hearings Panel.
16. Separate to the Section 42A report recommendations in response to submissions, Council has made a number of Clause 16(2) amendments to the PDP to achieve consistent formatting of rules and standards, including inserting semi colons between each standard, followed by "and" after the second to last standard (where all of the standards must be met to comply) or "or" after the second to last standard (when only one of the standards must be met to comply). These changes are neutral and do not alter the effect of the rules or standards, they simply clarify the intent. The Clause 16 corrections are reflected in **Appendix 1.1** to this Report (Officer's Recommended Provisions in response to Submissions).

4 Statutory Requirements

4.1 Statutory documents

17. I note that the Tangata Whenua Section 32 report provides detail of the relevant statutory considerations applicable to the Treaty Settlement Land overlay.
18. It is not necessary to repeat the detail of the relevant RMA sections and full suite of higher order documents here. Consequently, no further assessment of these documents has been undertaken for the purposes of this report.
19. However, it is important to highlight the higher order documents which have been subject to change since notification of the Proposed Plan which must be given effect to. Those that are relevant to the Treaty Settlement Land overlay.

4.1.1 Resource Management Act

20. The Government elected in October 2023, has repealed both the Spatial Planning Act 2023 and Natural and Built Environment Act 2023 on the 22 of December 2023 and has reinstated the RMA as Zealand's primary resource management policy and plan making legislation. The RMA continues to be in effect until new replacement legislation is passed.

4.1.2 National Policy Statements

4.1.2.1 National Policy Statements Gazetted since Notification of the PDP

21. The PDP was prepared to give effect to the National Policy Statements that were in effect at the time of notification (27 July 2022). This section provides a summary of the National Policy Statements, relevant to Treaty Settlement Land overlay that have been gazetted since notification of the PDP. As District Plans must be "prepared in accordance with" and "give effect to" a National Policy Statement, the implications of the relevant National Policy Statements on the PDP must be considered.



22. The National Policy Statement for Indigenous Biodiversity (NPS-IB) took effect on 4 August 2023. This was after the PDP was notified (27 July 2022), but while it was open for submissions. The objective of the NPS-IB is to maintain indigenous biodiversity so there is at least no overall loss in indigenous biodiversity. The objective is supported by 17 policies. These include Policy 1 and Policy 2 relating to the principles of the Treaty of Waitangi and the exercise of kaitiakitanga by tangata whenua in their rohe.
23. Part 3 of the NPS-IB sets out what must be done to give effect to the objective and policies.
24. As stated in Section 5.1.2, the Government has suspended certain requirements of the NPS-IB for a 3-year period and indicated that the replacement Resource Management legislation and an amended NPS-IB will further address this matter.
25. When the revised legislation takes effect, Council will need to consider the extent to which the changes in the District Plan more generally are required to give effect to the amended NPS-IB. IN the meantime, the NPS-IB will be relevant to activities being undertaken within the underlying zones and the Treaty Settlement Land overlay. However, the provisions of the Treaty Settlement Land overlay are not fundamentally inconsistent with the NPS-IB. The presence of indigenous vegetation and habitats will be another matter that is necessary to consider when planning for development on a site.
26. The National Policy Statement for Highly Productive Land (NPS-HPL) took effect on 17 October 2022, The NPS-HPL has a single objective: *"Highly productive land is protected for use in land-based primary production, both now and for future generations"*. The objective is supported by nine policies and a set of implementation requirements setting out what local authorities must do to give effect to the objective and policies of the NPS-HPL, including restrictions on the urban rezoning, rural lifestyle rezoning, and subdivision of highly productive land and requirements to protect highly productive land from inappropriate use and development.
27. The NPS-HPL has recently been amended, with changes gazetted on 16 August 2024, resulting in the removal of consenting barriers for new infrastructure, including renewable energy projects, indoor primary production and greenhouses. Driving amendments were the agriculture, horticulture and renewable energy sectors' concerns surrounding the NPS restricting activities needing to be located on highly productive land. These amendments came into effect on 14 September 2024.

4.1.2.2 National Policy Statements – Announced Future Changes

28. In October 2023 there was a change in government and several announcements have been made regarding work being done to amend or replace various National Policy Statements (summarised in **Table 1** below). The below NPS are of general relevance to the submissions received on the Treaty Settlement Land overlay chapter.



Table 1 Summary of announced future changes to National Policy Direction (as indicated by current Government, as of March 2024)

National Statement	Policy	Summary of announced future changes	Indicative Timing
National Policy Statement for Freshwater Management (NPS-FM)		<ul style="list-style-type: none"> Changes to hierarchy of obligations in Te Mana o Te Wai provisions Amendments to NPS-FM, which will include a robust and full consultation process with all stakeholders including iwi and the public 	End of 2024 2024 - 2026
National Policy Statement on Indigenous Biodiversity (NPS-IB)		<ul style="list-style-type: none"> Amendments to the NPS-IB Work to stop/cease implementation of new Significant Natural Areas 	2025 - 2026
National Policy Statement for Urban Development (NPS-UD)		<ul style="list-style-type: none"> Amendments to NPS-UD, including requirements for Tier 1 and 2 Council to 'live zone' enough land for 30 years of housing growth, and making it easier for mixed use zoning around transport nodes. 	By end of 2024
National Policy Statement for Renewable Electricity Generation (NPS-REG)		<ul style="list-style-type: none"> Amendments to NPS-REG, to allow renewable energy production to be doubled 	By end of 2024
National Policy Statement for Electricity Transmission (NPS-ET)		<ul style="list-style-type: none"> Amendments to NPS-ET, but at this stage direction and amendments are unclear. 	By end of 2024
National Policy Statement for Highly Productive Land (NPS-HPL)		<ul style="list-style-type: none"> Amendments to the NPS-HPL in light of needing to enable housing growth and remove consenting barriers. Possible amendments to the definition of 'Highly Productive Land' to enable more flexibility 	2024 - 2025
Proposed National Policy Statement for Natural Hazards (NPS-NH)		<ul style="list-style-type: none"> No update on progress has been provided by current government. 	Unknown

4.2 Council's Response to Current Statutory Context

29. The evaluation of submissions and recommendations in this report are based on the current statutory context (that is, giving effect to the current National Policy Statements). I note that the proposed amendments and



replacement National Policy Statements do not have legal effect until they are adopted by Government and formally gazetted.

30. Sections 55(2A) to (2D) of the RMA sets out the process for changing District Plans to give effect to National Policy Statements. A council must amend its District Plan to include specific objectives and policies or to give effect to specific objectives and policies in a National Policy Statement if it so directs. Where a direction is made under Section 55(2), Councils must directly insert any objectives and policies without using the Schedule 1 process and must publicly notify the changes within five working days of making them. Any further changes required must be done through the RMA schedule 1 process (such as changing rules to give effect to a National Policy Statement).
31. Where there is no direction in the National Policy Statement under Section 55(2), the Council must amend its District Plan to give effect to the National Policy Statement using the RMA schedule 1 process. The amendments must be made as soon as practicable, unless the National Policy Statement specifies a timeframe. For example, changes can be made by way of a Council recommendation and decision in response to submissions, if the submissions provide sufficient 'scope' to incorporate changes to give effect to the National Policy Statements.
32. I have been mindful of this when making my recommendations and believe the changes I have recommended are either within scope of the powers prescribed under Section 55 of the RMA or within the scope of relief sought in submissions.

4.2.1 National Environmental Standards

33. The National Environment Standards for Commercial Forestry 2017 (NESCF), which amend the NES-PF, came into effect on 3 November 2023. In addition to regulating the effects of plantation forestry, the NES-CF now regulates "exotic continuous-cover forestry", which is commercial forestry not intended to be harvested (i.e. carbon forestry). As such, the NES-CF now applies to all types of forestry deliberately established for commercial purposes (permanent indigenous forestry is not regulated under the NES CF). In addition to bringing exotic continuous-cover forestry within scope, the changes in the NES-CF: a. Allow plan rules to be more stringent or lenient to manage afforestation relating to both types of forestry. 2 b. Introduce a range of operational changes, including a new permitted activity standard for managing forestry slash at harvest and new requirements around management of wilding trees.

4.2.2 National Planning Standards

34. The National Planning Standards determine the sections that should be included in a District Plan, including the Strategic Direction chapters, and how the District Plan should be ordered. The Treaty Settlement Land overlay provisions proposed and recommended in this report follow these requirements.



4.2.3 Treaty Settlements

35. There have been no further Deeds of Settlement signed to settle historic Treaty of Waitangi Claims against the Crown, in the Far North District, since the notification of the PDP.

4.2.4 Iwi Management Plans – Update

36. Section 74 of the RMA requires that a local authority must take into account any relevant planning document recognised by an iwi authority and lodged with a territorial authority.
37. When the PDP was notified in July 2022, Council had 14 hapū/Iwi management planning documents which had been formally lodged with Council, as listed in the PDP section 32 overview report. Council took these management plans, including the broader outcomes sought, into account in developing the PDP. Of the 14 hapū/iwi management planning documents, only two have been revised since notification of the PDP:
38. Ngā Tikanga mo te Taiao o Ngāti Hine-Ngāti Hine Environmental Management Plan – 2022.
39. Ahipara Takiwā Environmental Management Plan.
40. 'Ngā Tikanga mo te Taiao o Ngāti Hine', the Ngāti Hine Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with the Council in 2022, after notification of the PDP in July 2022. In respect of the Treaty Settlement Land overlay, the Ngāti Hine Environmental Management Plan - 2022 provides the following direction:

Since the signing of Te Tiriti o Waitangi in 1840 and even earlier in 1835 with the signing of He Whakaputanga, Ngāti Hine leaders established a collective to deliberate and voice Ngāti Hine policy on Te Tiriti o Waitangi (1840) and constitutional matters. Today that voice is heard through Te Rūnanga o Ngāti Hine. Te Rūnanga o Ngāti Hine is the kaitiaki of claim Wai 682, a blanket claim over the Ngāti Hine rohe on behalf of the iwi of Ngāti Hine with the Waitangi Tribunal. Wai682 was filed in 1997 in the name of Te Rūnanga o Ngāti Hine by Erima Henare, Pita Paraone and Kevin Prime. There are various other claims within Ngāti Hine that have been filed with the Waitangi Tribunal such as Te Awa Tapu o Taumarere, Wai 49 and the Ballast Pit, Wai 327, Wai 462, 1040. Resolution of Tiriti claims is likely to have significant impact on management of resources within our rohe. In the interim, the precautionary approach would strongly suggest that significant management decisions should not exacerbate existing claims. In any dispute as to which version of the Treaty has mana, Ngāti Hine understands this to be consistent with international protocol i.e. contra proferentum rule 3, and its own mana i te whenua and kōrero tuku iho from tupuna. It was Maihi Kawiti who first established Te Runanga o Ngāti Hine to provide political leadership for our iwi and today his descendents are restructuring that runanga in readiness for the 20th' century. All of the inter-related components that make up Te Tū o Ngāti Hine (An expression to describe the collective will of Ngāti Hine). This is essential



to achieving of rangatiratanga and self determination as Ngāti Hine rangatira and sovereign.¹

3.5 NGĀTI HINE WHENUA Ngāti Hine are tangata whenua – literally the people of this land. It is important to note that the alienation, raupatu and land confiscation from the Crown and government entities over several generations has resulted in various whanau of Ngāti Hine being left with minimal land often left in Maori title and of a generally marginal quality. Much is landlocked, often the result of loss of land to the councils rating systems that continue to disadvantage and burden Maori. The restrictions placed on the communal holding of this land through the various successions of Maori land law, where first lists of owners were arbitrarily applied to different land parcels and later rules around succession and control of the land, have left us with difficult obstacles to face in seeking to now establish sustainable uses for this land. However, in line with the findings of the Stage One Report released by the Waitangi Tribunal we affirm what our tupuna had always understood that "Ngapuhi did not cede sovereignty to the British Crown". We currently await the findings of the WAI 1040 Stage Two Report that will include the korero pertaining to the Ngāti Hine experience of land loss and all the associated social and economic costs to Ngāti Hine. Economic development may see increases in population and consideration on the impacts and pressure on all resources including the whenua, water and the environment is a paramount concern of Ngāti Hine as rangatira and kaitiaki.

Issues

- Local and central government legislation such as the proposed Significant Natural Areas Act which further alienates whanau from exercising kaitiakitanga.*
- Capacity and capability issues for whanau, hapu and iwi looking to establish sustainable uses of their whenua.*

Policies

- 1. No further alienation of Maori land within the rohe. Long term sustainable use of remaining Maori lands should be adopted wherever this is economically viable to do so.*
 - 2. Further development of land resources within the rohe of Ngāti Hine should not be at the expense of the ancestral relationship of Ngāti Hine with that land, our culture and heritage.*
 - 3. Further development of land resources within the rohe of Ngāti Hine should not be at the expense of the environment.²*
41. The Ahipara Takiwā Environmental Management Plan was in draft form at the time of the notification of the PDP. This was updated, finalised and lodged with Council in 2023, after notification of the PDP in July 2022. In

¹ Ngā Tikanga mo te Taiao o Ngāti Hine - Ngāti Hine Environmental Management Plan 2022, p.23

² Ngā Tikanga mo te Taiao o Ngāti Hine - Ngāti Hine Environmental Management Plan 2022, p.45



respect of the Treaty Settlement Land overlay chapter, the Environmental Management Plan provides direction in relation to the following:

Arataki - Introduction

Whakapapa - Ngā Marae o Ahipara recognise that it is incumbent on the current generation to exercise our inherited kaitiakitanga. With the return of coastal lands through our Treaty Settlement, Ngā Marae o Ahipara have taken a strategic approach in expressing their mana whenua. This includes the following initiatives: Pou whenua are being erected at areas of cultural significance or wāhi tapu. Strategically placed signs printed with "Te Rarawa Kai Whare, Tribal Lands" alert visitors to the fact that they are entering iwi owned land. Land and dunes that have historically been abused by campers and vehicles have been fenced off to protect them. Representatives from each marae are permit holders for the taking of kai moana. Some hold honorary ranger status. The continued vigilance and support of the paua rāhui at Otia has ensured that this endangered species has a nursery and a sanctuary for their survival and their sustainability. This activity is also benefiting other species. Far North District Council (FNDC) building consents for Ahipara must come before our committee takiwā for consideration. Marae Takiwā o Ahipara members have no set meeting times but do meet regularly and can respond to developments at short notice. Today's kaumatua were privileged to have enjoyed the wealth of our takutai moana during their youth. "As mana whenua it is our duty to ensure that we educate our whanau about the responsibilities of kaitiaki of Te Taiao. It takes a village to raise a child and a village to ensure that knowledge like that shared here is passed on. We owe it to our mokopuna to leave a legacy of a healthy, sustainable environment. " 4 In exercising our kaitiakitanga Ngā Marae o Ahipara members and associates promote the reinstatement of some of the kawa (or rules) first imposed by our tupuna Pōroa in order to sustain the natural resources of the takiwā for the benefit of all.³

Aromatawai - Scope and Purpose

Tino rangatiratanga includes the right to a partnership in resource allocation, and management decisions where these impact on tribal resources. This plan is the principal environmental management document for the Communities of Ngā Marae o Ahipara. In preparing this plan, Ngā Marae o Ahipara have taken an intergenerational approach focussed on principles and values. This includes respect for the natural world and an acknowledgement that we are part of that natural world, not separate from or elevated above it. The holistic approach to resource management described here means that many issues identified in this plan are addressed by a variety of agencies. This reflects the inability of the existing legislation and institutional structures in Aotearoa to fully incorporate the Māori world view, in this case that of Ngā Marae o Ahipara. The intention is that the development and implementation of this plan will advance collective

³ Ahipara Takiwa Management Plan 2023, p.12



responsibility of Ngā Marae o Ahipara for our impacts on the natural environment and support a thoughtful, reasoned and culturally appropriate response to mitigating and remediating those impacts as required. This plan has been developed to assist Ngā Marae o Ahipara in providing information, direction and a framework so as to achieve a greater understanding of issues relating to resource management in the Ahipara takiwā and better protection of the natural and cultural resources of the takiwā. This plan is also intended to assist others (territorial authorities, developers, community) to:

- More comprehensively understand what is important to iwi/hapū/ Ngā Marae o Ahipara as tangata whenua communities.*
- Gain insight into what 'sustainable management' means from the perspective of tangata whenua kaitiaki and how this can be expressed in Ahipara takiwā.*
- Identify and understand the priorities of iwi/hapū/ Ngā Marae o Ahipara (e.g. how they would like to be consulted and on what, and how things of value identified by tangata whenua might be managed both within and outside the RMA framework).*
- Guide any potential applicants for resource consent on what information is necessary for tangata whenua to assess potential environmental effects, including effects on Māori cultural values.*
- Identify key specific sites where management and/or protection is required to safeguard resources.*
- Identify how the capacity and capability of tangata whenua could be enhanced to assist the management of natural and physical resources.*
- Improve relationships between iwi/hapū/ Ngā Marae o Ahipara and local authorities and developers.*
- Provide a platform from which Ngā Marae o Ahipara can contribute to the management of the natural, physical and historical resources which are important to them.*
- Provide a basis and guidelines for future consultation and input relating to developments in the Ahipara Takiwā waahi whai take/area of interest.*
- This plan is intended to be in addition to the ongoing need for direct communication and dialogue with affected marae and hapū on a "kanohi ki te kanohi" or "face to face" basis with mana whenua.*



- *Objectives are to protect and maintain resources, assets and people, and to enhance the well-being of tangata whenua whanau in the Ahipara Takiwā.*
 - *Te Oneroa a Tōhe Board (the 90 Mile Beach Governance Board) was established as a statutory body via Treaty Settlement redress for the northern tribes Te Aupouri, Ngāti Kuri, Ngai Takoto and Te Rarawa (and including Ngāti Kahu as an interim measure). This Board is established as a permanent committee of the Far North District and Northland Regional councils. The purpose of the Board is to provide governance and direction to all those who have a role in, or responsibility for, Te Oneroa a Tōhe management area, in order to protect and enhance environmental, economic, social, cultural, and spiritual well-being within that area for the benefit of present and future generations. The Board has prepared a Statutory Management Plan for four parts of Te Oneroa a Tōhe (referred to as Parts A, B, C and D). Parts C and D are located within the waahi whai take to which this plan applies and together cover approximately 129ha. The completed Te Oneroa a Tōhe management plan is still evolving, but it is expected to be consistent with this plan.*
 - *Also relevant is that the Te Hiku Conservation Board are in the process of preparing a Conservation Management Strategy for Te Hiku. The alignment between this plan and the CMS will need to be reviewed before completion.⁴*
42. These updated hapū/iwi management plans are considered through this report to the extent relevant and within the scope of the submissions on relevant provisions.

4.3 Section 32AA evaluation

43. This report uses 'key issues' to group, consider and provide reasons for the recommended decisions on similar matters raised in submissions. Where changes to the provisions of the PDP are recommended, these have been evaluated in accordance with Section 32AA of the RMA.
44. The s32AA further evaluation for each key issue considers:
- a) Whether the amended objectives are the best way to achieve the purpose of the RMA.
 - b) The reasonably practicable options for achieving those objectives.
 - c) The environmental, social, economic and cultural benefits and costs of the amended provisions.
 - d) The efficiency and effectiveness of the provisions for achieving the objectives.

⁴ Ahipara Takiwa Management Plan 2023, p. 16-17



- e) The risk of acting or not acting where there is uncertain or insufficient information about the provisions.
- 45. The s32AA further evaluation contains a level of detail that corresponds to the scale and significance of the anticipated effects of the changes that have been made. Recommendations on editorial, minor and consequential changes that improve the effectiveness of provisions without changing the policy approach are not re-evaluated.

4.4 Procedural matters

- 46. Due to the clarity of submissions, no correspondence or meetings with submitters needed to be undertaken and there are no procedural matters to consider for this hearing.
- 47. No pre-hearing meetings or Clause 8AA meetings on the submissions relating to Treaty Settlement Land overlay were held prior to the finalisation of this s42A report.

4.5 Proposed Plan Variation 1

- 48. FNDC notified Proposed Plan Variation 1 (Minor Corrections and Other Matters) for public submissions on 14 October 2024. The submission period closed on 12 November 2024 and the further submission period closed on 10 December 2024. Proposed Plan Variation 1 makes minor amendments to; correct minor errors, amend provisions that are having unintended consequences, remove ambiguity and improve clarity and workability of provisions. This includes amendments to the zoning of some properties, and the Coastal flood hazard areas.
- 49. Plan Variation 1 did not propose any changes to the TSL overlay chapter.

5 Consideration of submissions received

5.1 Overview of submissions received.

- 50. A total of 94 original submission points and 182 further submission points were received on the Treaty Settlement Land overlay chapter.
- 51. 28 original submitters (with 94 individual submission points) and 30 further submitters (with 182 individual submission points) were received on the Treaty Settlement Land overlay chapter
- 52. The main submissions on the Treaty Settlement Land overlay chapter came from:
 - a) Iwi Authorities and Post Settlement Governance Entities (PSGE) such as Te Rūnanga o Whaingaroa (S486), Te Aupōuri Commercial Development Ltd (S339), Te Rūnanga Ā Iwi O Ngāpuhi (S498), Te Rūnanga o NgaiTakoto Trust (S390), and Kahukuraariki Trust (S379).
 - b) Hapū such as Te Runanga o Ngāti Rehia (S559).
 - c) Infrastructure providers such as Fire and Emergency New Zealand (FENZ S512) and Top Energy Ltd (TE S483).



- d) Government Agencies such as Kāinga Ora Homes and Communities (Kāinga Ora S561) and Waka Kotahi NZ Transport Agency (NZTA S356).
 - e) Non-governmental organisations such as Royal Forest and Bird Protection Society of New Zealand (Forest & Bird S511), Carbon Neutral Trust (CN Trust S529), Kapiro Conservation Trust (KC Trust S338)
53. Community organisations such as Kapiro Residents Association (KRA S427), Our Kerikeri Community Charitable Trust (Our KCC Trust S338), Vision Kerikeri (Vision for Kerikeri and Environs, VKK) (VKK S521)
54. The key issues identified in this report are set out below:
- a) Key Issue 1: Objectives
 - f) Key Issue 2: Policies
 - g) Key Issue 3: Rules
 - h) Key Issue 4: Standards
 - i) Key Issue 5: General / Plan content / Miscellaneous
 - j) Key Issue 6: Mapping
 - k) Key Issue 7: Applications Subject to Multiple Provisions in 'How the Plan Works' chapter
55. Section 5.2 constitutes the main body of the report and considers and provides recommendations on the decisions requested in submissions. Due to the large number of submissions received and the repetition of issues, as noted above, it is not efficient to respond to each individual submission point raised in the submissions. Instead, this part of the report groups similar submission points together under key issues. This thematic response assists in providing a concise response to, and recommended decision on, submission points.

5.2 Officer Recommendations

56. A copy of the recommended plan provisions for the Treaty Settlement Land overlay chapter is provided in **Appendix 1 – Recommended provisions to this report.**
57. A full list of submissions and further submissions on the Treaty Settlement Land overlay chapter is contained in **Appendix 2 – Recommended Decisions on Submissions to this report.**
58. Additional information can also be obtained from the Summary of Submissions (by Chapter or by Submitter) Submissions database Far North District Council (fndc.govt.nz) the associated Section 32 report on this chapter section-32-overview.pdf (fndc.govt.nz) the maps on the ePlan Map - Far North Proposed District Plan (isoplan.co.nz).



5.2.1 Key Issue 1: Objectives

Overview

Provision(s)	Officer Recommendation(s)
Objective TSL-01	<ul style="list-style-type: none"> Retain as notified
Objective TSL-02	<ul style="list-style-type: none"> Amend objective to include 'environmental'
Objective TSL-03	<ul style="list-style-type: none"> Correct a spelling error
Objective TSL-04	<ul style="list-style-type: none"> Amend objective to improve clarity and intention

Analysis of Submissions on Key Issue 1

New Objective TSL-05

Matters raised in submissions

59. One submission from Kāinga Ora (S561.055) supports in part the retention of all objectives of the chapter and requests the insertion of a new objective as follows:

TSL-05

Tangata Whenua have maximum flexibility to occupy, develop and use Treaty Settlement Land, exercising their role as kaitiaki by:

- 1. Incorporating mātauranga and tikanga Māori; and*
- 2. Ensuring the health, safety and wellbeing of people and communities is maintained.*

60. There are three further submissions which oppose S561.055 (FS32.109, FS47.069 and FS348.142). And there are two further submissions which support and support in part S561.055 (FS23.327 and FS409.006).

Analysis

61. In response to the submission and request to insert a new objective as outlined in paragraph 59. I consider that an objective is a statement of what is to be achieved to resolve a particular issue. In this case the issue is the enablement of Treaty Settlement Land returned to Iwi through their respective Treaty Claims Settlement legislation.
62. I consider that the new objective as written may go beyond the intention of the Treaty Settlement Land overlay by the inclusion of the term 'tangata whenua' and therefore potentially lead to confusion and unintended outcomes. In addition, I consider that the intention of the request is substantially provided for by objective TSL-03.

Recommendation

63. For the above reasons outlined above I recommend the following:



- a) Submission S561.055 is rejected in part, insofar as the intention of the proposed objective is already provided for in TSL-O3.

Objective TSL-O1

Matters raised in submissions

64. Submission S339.034 and S339.035 from Te Aupōuri Commercial Development Ltd supports objective TSL-O1 and requests its retention as notified.

Analysis

65. Submissions S339.034 and S339.035 in support of the retention of TSL-O1 are acknowledged and accepted.

Recommendation

66. For the reasons outlined above I recommend the following:
 - a) Submissions S339.034 and S339.035 are accepted.

Objective TSL-O2

Matters raised in submissions

67. Submission S339.035 from TACD Ltd supports objective TSL-O2 and requests its retention as notified.
68. Submissions S339.035, S390.067, S498.068 and S486.081 from TACD Ltd, TRONT Trust, TRAION and TROW support objective TSL-O2 and request an amendment to include and enable environmental development.
69. There are three further submissions (FS151.114, FS23.236 and FS243.111) which support the submissions.

Analysis

70. Submission S339.035 in support of the retention of TSL-O2 is acknowledged.
71. Submissions S390.067 and S498.068 request an amendment as outlined in paragraph 68. I consider the amendment to include the word 'environmental' in the objective to have merit as it ensures consistency with Part 2 of the RMA 1991.
72. I also recommend a consequential amendment to TSL-P4 to also include the word 'environmental' for the same reasons given for TSL-O2.

Recommendation

73. For the reasons outlined above I recommend the following:
 - a) Submission S339.035 is accepted.



- b) Submissions S390.067, S498.068 and S486.081 are accepted and that objective TSL-O2 be amended to read as follows:

TSL-O2

Treaty Settlement Land returned as commercial redress supports social, cultural, environmental and economic development.

Objective TSL-O3

Matters raised in submissions

74. Submission S339.036 from TACD Ltd supports objective TSL-O3 and requests its retention as notified.
75. Submission S368.038 from FNDC supports in part objective TSL-O3 and requests and amendment to correct a spelling error.

Analysis

76. Submission S339.036 in support of the retention of TSL-O3 is acknowledged.
77. Submission S368.038 requests a minor amendment as outlined in paragraph 75. I consider the amendment to correct a spelling error to be necessary and important.

Recommendation

78. For the reasons outlined above I recommend the following:
- a) submission S339.036 is accepted.
- b) submission S368.038 is accepted and that objective TSL-O3 be amended to read as follows:

TSL-O3

Treaty Settlement Land returned as cultural redress provides for the on-going relationship tangata tangata whenua has with their land.

Objective TSL-O4

Matters raised in submissions

79. Submission S339.037 from TACD Ltd, supports objective TSL-O4 and requests its retention as notified.
80. Submissions S498.069, S390.068 and S486.082 from TRAION, TRONT Trust and TROW oppose objective TSL-O4 and request the following amendment:

TSL-O4

Use and development on Treaty Settlement Land can fully utilise reflects the sustainable carrying capacity of the land and surrounding environment.



81. There are three further submissions which support S498.069 (FS151.005, FS23.237, FS243.117).
82. There is one further submission which supports S390.068 (FS243.102).
83. There is one further submission which supports S486.82 (FS243.109).

Analysis

84. Submission S339.037 in support of the retention of TSL-O4 is acknowledged.
85. Submissions S498.069, S390.068 and S486.082 request an amendment to TSL-O4 as outlined in paragraph 80. The reason provided is that the term "*sustainable carrying capacity*" is uncertain and contestable and an amendment is required to make clear that the objective is to enable development. However, I consider that the amendment requested to insert the words "*can fully utilise*", while it has merit will not achieve the clarity required.
86. I consider that the intention of the amendment may be better served by amending "*sustainable carrying capacity*" to "*sustainable servicing capacity*" because the intention of the objective is to ensure that the development can be adequately service for water, wastewater and stormwater.

Recommendation

87. For the reasons outlined above I recommend that:
 - a) Submission S339.037 is accepted.
 - b) Submissions S498.069, S390.068 and S486.082 is accepted in part and objective TSL-O4 to read as follows:

TSL-O4

Use and development on Treaty Settlement Land reflects the sustainable ~~carrying~~ servicing capacity of the land and surrounding environment.

Section 32AA evaluation

88. I consider that the amendments to the objectives that I have recommended, are a more appropriate way to achieve the purpose of the RMA than the notified objectives. The amendments better promote sustainable management by improving the way in which the objectives recognise and provide for section 6(e) and take into account section 8 of the RMA.



5.2.2 Key Issue 2: Policies

Overview

Provision(s)	Officer Recommendation(s)
Policy TSL-P1	<ul style="list-style-type: none"> • Retain as notified
Policy TSL-P2	<ul style="list-style-type: none"> • Amend policy to remove the word 'small scale' and 'environmental'
Policy TSL-P4	<ul style="list-style-type: none"> • Minor amendments

Analysis of Submissions on Key Issue 2

Policies (general)

Matters raised in submissions

89. Submissions S486.080, S498.011, S498.067, S390.010, S390.066 and S486.016 from TROW, TRAION and TRONT Trust, variously oppose and / or support in part the policies in the Treaty Settlement Land overlay chapter and request amendments of the policies which are not enabling and limit or constrain development opportunities for Iwi and Hapū. No policies are specified, and no wording has been provided.
90. There are three further submissions that support S498.011 (FS151.51, FS23.179 and FS243.114).
91. There are three further submissions that support submission S498.067 (FS151.113, FS23.235 and FS243.116).
92. There are two further submissions that support S390.010 (FS243.0100 and FS243.106).
93. There are two further submissions that support S390.066 (FS243.101 and FS243.107).
94. There is one further submission that supports S486.016 (FS243.108).

Analysis

95. I consider that the intention of the Treaty Settlement Land overlay chapter, objectives and policies is to provide for the enabling of development on Treaty Settlement Land.
96. As the requests for amendments by submissions S486.080, S498.011, S498.067, S390.010, S390.066 and S486.016 do not identify specific policies, nor provide wording, I am unable to provide for the request. The submitters may wish to provide proposed wording as part of any evidence given at the hearing.



Recommendation

97. For the reasons outlined above, I recommend the following:
- a) Submissions S486.080, S498.011, S498.067, S390.010, S390.066 and S486.016 are rejected in part insofar as the policies of the TSL generally provide for the relief sought.

New Policy TSL-P5

Matters raised in submissions

98. Submission S561.058 from Kāinga Ora supports the policies in part and requests the insertion of a new policy as follows:

TSL-P5

Enable alternative approaches to site access and infrastructure provision where the occupation, use and development of Treaty Settlement Land is constrained by access or the availability of infrastructure.

99. There are three further submissions that support or support in part S561.058 (FS36.068, FS409.009 and FS23.330) and three further submissions that oppose the submission (FS32.112, FS47.072 and FS348.145).

Analysis

100. Submission S561.058 requests the insertion of a new policy as described in paragraph 98. The reason given is that a new policy should be provided to outline how the objectives are to be achieved.
101. I consider that what is being requested in the relief sought and reasons provided are unclear. The term "*alternative approaches to site access and infrastructure provision*" is broad and open to interpretation.
102. I also consider that the proposed policies, particularly TSL-P3g, as they stand, provide for how the objectives of the chapter are to be achieved, including flexibility in the provision of services where appropriate.

Recommendation

103. For the reasons outlined above, I recommend the following:
- a) Submission S561.058 is rejected.

Policy TSL-P1

Matters raised in submissions

104. Submission S339.038 from TACD Ltd supports policy TSL-P1 and requests the following amendment:



TSL-P1

~~Provide for~~ *Enable the occupation use and development of Treaty Settlement Land in accordance with iwi, hapū and whānau aspirations outlined in their environment, economic, cultural and social plans and strategies.*

105. There is one further submission in support of S339.038 (FS243.121)

Analysis

106. Submission S339.038 supports the intention of policy TSL-P1 and requests amendments to improve the policy by aligning the aspirations of whānau, hapū and iwi as outlined in any plans and strategies that have been prepared, as outlined in paragraph 104.
107. I consider that while the suggested amendment is consistent with the intended enabling outcome of the TSL overlay, the policy may go beyond the intention of the TSL overlay by the inclusion of the terms hapū and whānau and result in unintended consequences. As such I recommend the submission be rejected.

Recommendation

108. For the reasons outlined above, I recommend the following:
- a) Submission S339.038 is rejected.

Policy TSL-P2

Matters raised in submissions

109. Submission S339.039 from TACD Ltd supports policy TSL-P2 and requests and amendment to the policy as follows:

TSL-P2

Enable a range of activities on Treaty Settlement Land including marae, papakāinga, customary use, cultural and ~~small-scale~~ commercial activities where the adverse effects can be avoided, remedied or mitigated.

110. There is one further submission in support of S339.039 (FS243.122) and one in opposition. (FS354.186).

Analysis

111. Submission S339.039 supports the intention of policy TSL-P2 and does not consider it necessary to restrict the scale of commercial activities and seeks greater flexibility for the enablement of commercial activities within the Treaty Settlement Land overlay. The available landholdings to return to Iwi are typically rural farm and forestry holdings.



112. I consider the deletion of the words "*small scale*" from policy TSL-P2 to have merit as the permitted standard for commercial activity in the Treaty Settlement Land overlay is provided for in the rule TSL-R12.

Recommendation

113. For the reasons outlined above, I recommend the following:
- a) Submission S339.039 is accepted.

Policy TSL-P3

Matters raised in submissions

114. Submissions S486.083, S498.070 and S390.069 from TROW, TRAION and TRON Trust oppose policy TSL-P3, as it is considered to place unnecessary constraints on the development of treaty settlement land and request the following amendments:

'TSL-P3

Provide for development on Treaty Settlement Land where it is demonstrated that:

- a. ~~it is compatible with surrounding activities;~~*
- b. ~~it will not compromise the occupation, development and use of Treaty Settlement Land;~~*
- c. ~~it will not compromise the underlying zone, adjacent land or other zones to be efficiently or effectively used for their intended purpose;~~*
- d. any values identified through cultural redress are maintained;*
- e. it maintains the character and amenity of surrounding area;*
- f. it provides for community wellbeing, health and safety;*
- g. it can be serviced by onsite infrastructure or reticulated infrastructure where this is available; and*
- h. any adverse effects can be avoided, remedied or mitigated.'*

115. There are three further submissions in support of S486.083, S498.070 and S390.069 (FS151.116, FS23.238, FS243.118 and FS243.103), and one further submission in opposition (FS354.188).

116. Submission S561.056 from Kāinga Ora, supports in part policy TSL-P3 and requests the following amendments:

TSL-P3

Provide for development on Treaty Settlement Land where it is demonstrated that:-

- a. ~~it is compatible with surrounding activities;~~*
- b. ~~it will not compromise the occupation, development and use of Treaty Settlement Land;~~*
- c. ~~it will not compromise the underlying zone, adjacent land or other zones to be efficiently or effectively used for their intended purpose;~~*



- ~~d. any values identified through cultural redress are maintained;~~
- ~~e. it maintains the character and amenity of surrounding area;~~
- ~~f. it provides for community wellbeing, health and safety;~~
- ~~g. it can be serviced by onsite infrastructure or reticulated infrastructure where this is available; and any adverse effects can be avoided, remedied or mitigated.~~

Recognise and provide for mātauranga Māori, tikanga Māori and kaitiakitanga when determining the scale, intensity and compatibility of activities in the Māori purpose zone, including when considering measures to avoid, remedy or mitigate adverse effects.

117. There are four further submissions which oppose submissions S561.056 (FS32.110, FS354.189, FS47.070 and FS348.143) and two further submissions which support or support in part the submission (FS409.007 and FS23.328).
118. Submissions S511.107 and S442.126 from Forest and Bird and KC Trust oppose policy TSL-P3 and requests an amendment to include more specific recognition of the importance of protecting and natural values including the protection of SNAs. No specific wording has been provided.
119. There are three further submissions in support of S511.107 (FS570.1678, FS566.1692 and FS569.1714), one further submission in support of S442.126 (FS346.737) and one in opposition to the submission (FS409.018).
120. Submission S339.040 from TACD Ltd requests an amendment to policy TSL-P3 as follows:

TSL-P3

Provide for the occupation, use and development on Treaty Settlement Land where it is demonstrated that:

- ~~a. it is compatible with surrounding activities;~~
- ~~b. it will not compromise the occupation, development and use of Treaty Settlement Land;~~
- ~~c. it will not compromise the underlying zone, adjacent land or other zones to be efficiently or effectively used for their intended purpose;~~
- ~~d. any values identified through cultural redress are maintained;~~
- ~~e. it maintains the character and amenity of surrounding area;~~
- ~~f. it provides for community wellbeing, health and safety;~~
- ~~g. it can be serviced by onsite infrastructure or reticulated infrastructure where this is available; and~~
- ~~h. any adverse effects can be avoided, remedied or mitigated.~~

121. There is one further submission which supports in part S339.040 (FS243.123) and one which opposes the submission (FS354.187).



Analysis

122. Submissions S486.083, S498.070 and S390.069 request an amendment to TSL-P3 as outlined in paragraph 114.
123. I consider that while the intended outcome of the treaty settlement overlay is enablement, there is also a need to balance the outcome with the intended outcomes of the underlying and surrounding zones. In cases where the activities are similar and both the TSL overlay and underlying zone then a more enabling framework is provided. It is therefore considered that the TSL-P3 should be retained as notified and therefore the submissions be rejected.
124. Submission S561.056 requests an amendment to TSL-P3 as outlined in paragraph 116.
125. I consider that as I recommended a rejection of the requested new objective TSL-O5 as outlined in paragraph 59, it is appropriate that this submission is also rejected.
126. Submissions S511.107 and S442.126 request an amendment to policy TSL-P3 as outlined in paragraph 118.
127. I consider that as the request is provided for in policy TSL-P4(i) and no specific wording has been provided, it is appropriate to reject the submission.
128. Submission S339.040 requests an amendment to TSL-P3 as outlined in paragraph 120.
129. I consider that, similarly to submissions S486.083, S498.070 and S390.069, while the intended outcome of the treaty settlement overlay is enablement, there is also a need to balance the outcome with the intended outcomes of the underlying zone. In cases where the activities are similar and both the TSL overlay and underlying zone, then a more enabling framework is provided. It is therefore considered that the TSL-P3 should be retained as notified and therefore the submissions be rejected.

Recommendation

130. For the reasons outlined above, I recommend the following:
 - a) Submissions S486.083, S498.070 and S390.069 are rejected.
 - b) Submission S561.056 is rejected.
 - c) Submission S511.107 and S442.126 is rejected.
 - d) Submission S339.040 is rejected.



Policy TSL-P4

Matters raised in submissions

131. Submissions S486.084, S390.070 and S498.071 from TROW, TRON Trust and TRAION support the retention of policy TSL-P4 in general and policy TSL-P4 (c) as in requires consideration of the positive effects of land use and subdivision.
132. There are two further submissions which support the submissions (FS151.117 and FS23.239).
133. Submission S561.057 from Kāinga Ora supports in part policy TSL-P4 and requests the following amendments:

'TSL-P4

Manage land use and subdivision to address the effects of the activity requiring resource consent, including (but not limited to) consideration of the following matters where relevant to the application:

- a. — consistency with the scale, density, design and character of the environment and purpose of the zone;*
 - b. — the location, scale and design of buildings or structures;*
 - c. — the positive effects resulting from the economic, social and cultural wellbeing provided by the proposed activity;*
 - d. — managing reverse sensitivity effects on adjacent land uses, including:*
 - a. — any setbacks, fencing, screening or landscaping required to address potential conflicts with adjacent land uses;*
 - b. — the ability of surrounding properties to undertake primary production activities in a rural environment;*
 - e. — the adequacy and capacity of available or programmed development infrastructure to accommodate the proposed activity; or the capacity of the site to cater for on-site infrastructure associated with the proposed activity;*
 - f. — the adequacy of roading infrastructure to service the proposed activity;*
 - g. — managing natural hazards;*
 - h. — any loss of highly productive land;*
 - i. — adverse effects on areas with historic heritage and cultural values, natural features and landscapes, natural character or indigenous biodiversity values; and*
 - j. — any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6.*
- Enable the occupation, use and development of Treaty Settlement Land in areas where there are natural and physical resources that have been scheduled in the District Plan in relation to heritage areas, historic heritage, sites and areas of significance to Māori by considering:*
- a. the need to enable development, occupation and use of Treaty Settlement Land in accordance with mātauranga and tikanga to support the social, cultural and economic wellbeing of Mana Whenua; and*



b. that there may be no or limited alternative locations for whanau, hapū or iwi to occupy, manage and use their ancestral lands.'

134. There are four further submissions which oppose S561.057 (FS32.111, FS354.190, FS47.071 and FS348.144) and two further submissions which support or support in part the submission (FS409.008 and FS23.329).

Analysis

135. Submissions S486.084, S390.070 and S498.071 are acknowledged and accepted.
136. Submission S561.057 requests an amendment as outlined in paragraph 133. I consider that the amendment to may go beyond the intention of the Treaty Settlement Land overlay by the inclusion of the terms 'matauranga and tikanga' and 'Mana Whenua'.
137. In addition, as I have recommended a rejection of the requested new objective TSL-O5 in paragraph 59, I recommend submission S561.057 be rejected.

Recommendation

138. For the reasons outlined above, I recommend the following:
- a) Submissions S486.084, S390.070 and S498.071 are accepted.
 - b) Submission S561.057 is rejected.
139. Minor amendments are recommended to TSL-P4 under clause 16, schedule 1 of the RMA.

Section 32AA evaluation

140. I consider that the amendments to the objectives that I have recommended are more appropriate way to achieve the purpose of the RMA than the notified objectives, because they better promote sustainable management by improving the way in which the objectives recognise and provide for section 6(e) and take into account section 8 of the RMA.

5.2.3 Key Issue 3: Rules

Overview

Provision(s)	Officer Recommendation(s)
Rule TSL-R1	<ul style="list-style-type: none"> • Amend rule for consistency
Rule TSL-R2	<ul style="list-style-type: none"> • Minor amendment
Rule TSL-R3	<ul style="list-style-type: none"> • Retain as notified
Rule TSL-R4	<ul style="list-style-type: none"> • Retain as notified
Rule TSL-R5	<ul style="list-style-type: none"> • Retain as notified
Rule TSL-R6	<ul style="list-style-type: none"> • Retain as notified



Provision(s)	Officer Recommendation(s)
Rule TSL-R10	<ul style="list-style-type: none"> • Retain as notified
Rule TSL-R11	<ul style="list-style-type: none"> • Amend to include Kura Kaupapa and Whare Wananga
Rule TSL-R12	<ul style="list-style-type: none"> • Retain as notified
Rule TSL-R13	<ul style="list-style-type: none"> • Retain as notified
Rule TSL-R14	<ul style="list-style-type: none"> • Amend the rule title

Analysis of Submissions on Key Issue 3

Rule TSL-R1 New building or structures and extensions or alterations to an existing building or structures

Matters raised in submissions

141. Submission S561.059 from Kāinga Ora supports in part rule TSL-R1 and requests the deletion of PER-1, the insertion of a new standard TSL-S7-Impermeable Surfaces and delete the activity status related to PER-1 as follows:

<i>TSL-R1</i>	<i>New building or structure, and extensions or alterations to an existing building or structure</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <p><i>The new building or structure, or extension or alteration to an existing building or structure, will accommodate a permitted activity.</i></p> <p><i>PER-2_1</i></p> <p><i>The new building or structure, or extension or alteration to an existing building or structure, complies with standards:</i></p> <p><i>TSL-S1 Maximum height;</i></p> <p><i>TSL-S2 Height in relation to boundary;</i></p> <p><i>TSL-S3 Setbacks (excluding from MHWS or wetland, lake and river margins);</i></p> <p><i>TSL-S4 Setback from MHWS;</i></p> <p><i>TSL-S5 Building or structure coverage; and</i></p> <p><i>TSL-S6 On-site servicing; and</i></p> <p><i>TSL-S7 Impermeable surfaces.</i></p>	<p><i>Activity status where compliance not achieved with PER-2 1: Restricted Discretionary</i></p> <p><i>Matters of discretion are restricted to:</i></p> <p><i>a. the matters of discretion of any infringed standard.</i></p> <p><i>Activity status where compliance not achieved with PER 1: Discretionary</i></p>

142. There are three further submissions that oppose S561.059 (FS32.113, FS47.073 and FS348.146) and one which supports the submission (FS23.331).



143. Submission S431.120 from John Andrew Riddell does not state a position and requests an amendment to rule TSL-R1 so that any proposal to set a structure less than 20 meters from the coastal marine or from rivers and banks is a non-complying activity.
144. There is one further submission in support of S431.120 (FS332.120).

Analysis

145. Submission S561.059 requests amendments as outlined in paragraph 141. I consider that the request to delete PER-1 is inconsistent with changes in the MPZ and other chapters and therefore PER-2 is retained subject to the amendments for consistency with the MPZ and other chapters (see **Appendix 1.1**).
146. In addition, to the request to insert an additional standard for impermeable surfaces to be unnecessary as the PDP has addressed the issue of impermeable surfaces as activity and through a rule in each zone. While the TSL is an overlay it is consistent in this regard and has addressed impermeable surfaces through rule TSL-R2. Accordingly, I recommend the submission point is rejected.
147. Submission S431.120 relating to setbacks from MHWS was considered in Key Issue 20 of the Coastal Environment section 42A report⁵. The reporting officer recommended deleting all Standard 4 'Setback from MHWS' standards across all zone chapters, on the basis that the issue was best addressed in the Coastal Environment chapter.

Recommendation

148. For the reasons outlined above, I recommend the following:
149. Submission S561.059 is rejected and TSL-S4 be deleted from Rule TSL-R1.
 - a) Submission S431.120 is rejected.

Rule TSL-R2 Impermeable surfaces

Matters raised in submissions

150. Submission S561.060 from Kāinga Ora supports in part rule TSL-R2 and requests that it be deleted in its entirety from the rules section of the chapter and a new standard for impermeable surfaces.
151. There are three further submissions that oppose S561.060 (FS32.114, FS47.074 and FS348.147) and one that supports the submission (FS23.332).
152. Submission S481.001 does not state its position and seeks to ensure that the PDP adequately controls effects from stormwater discharge. The

⁵ Paragraph 494 for specific analysis of John Andrew Riddell's submission point.



submitter requests that additional matters be added to the list of relevant matters for discretion through the following amendments:

<p><i>TSL-R2</i></p>	<p><i>Impermeable surfaces</i></p>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1: The impermeable surface coverage of any site is no more than 35%.</i></p> <p><i>Except that:</i></p> <p><i>On sites less than 5000m² containing marae, the impermeable surface coverage is no more than 50%.</i></p>	<p><i>Activity status where compliance not achieved with PER-1: Restricted Discretionary</i></p> <p><i>Matters of discretion are restricted to:</i></p> <ul style="list-style-type: none"> <i>a. the extent to which landscaping or vegetation may reduce adverse effects of run-off;</i> <i>b. the effectiveness of the proposed method for controlling stormwater on site;</i> <i>c. the availability of land for disposal of effluent and stormwater on site without adverse effects on <u>adjoining adjacent</u> waterbodies (including groundwater and aquifers) or on <u>adjoining-adjacent</u> sites;</i> <i>d. whether low impact design methods and green spaces can be used;</i> <i>e. any cumulative effects on total catchment impermeability; and</i> <i>f. natural hazard mitigation and site constraints.</i> <i>g. <u>Avoiding nuisance or damage to adjacent or downstream properties.</u></i> <i>h. <u>The extent to which the diversion and discharge maintains pre-development stormwater run-off flows and volumes.</u></i> <i>i. <u>The extent to which the diversion and discharge mimics natural run-off patterns.</u></i>

- 153. There is one further submission which opposes S481.001 (FS409.002).
- 154. Submission S339.041 from TACD Ltd opposes rule TSL-R2 and requests it be deleted.

Analysis

- 155. Submission S561.060 requests the deletion of rule TSL-R2, however I consider that as there is no clear reason to change the approach, and no



evidence has been provided to justify the request, I recommend that the submission be rejected.

156. Regarding submission S481.001, while I agree that adverse stormwater effects can occur further downstream than the immediately adjoining properties, I also concur with the authors of other zone chapter section 42A reports which have made minor amendments of the wording of matter c) to reflect this and be consistent with other chapters. As such I recommend accepting the submission point in part.
157. Submission S339.041 considers that stormwater management is adequately provided for by standards *TSL-S5 'Building or structure coverage'* and *TSL-S6 'On-site services'*. I consider that as there is no clear reason to change the approach, and no evidence has been provided to justify the request, I recommend that the submission be rejected.

Recommendation

158. For the reasons outlined above, I recommend the following:
- a) Submission S561.060 and S339.041 is rejected.
 - b) Submission S481.001 be accepted in part and that rule TSL-R2 is amended as follows:

<i>TSL-R2</i>	<i>Impermeable surfaces</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1: The impermeable surface coverage of any site is no more than 35%.</i></p> <p><i>Except that:</i></p> <p><i>On sites less than 5000m² containing marae, the impermeable surface coverage is no more than 50%.</i></p>	<p><i>Activity status where compliance not achieved with PER-1: Restricted Discretionary</i></p> <p><i>Matters of discretion are restricted to:</i></p> <ul style="list-style-type: none"> <i>a. the extent to which landscaping or vegetation may reduce adverse effects of run-off;</i> <i>b. the effectiveness of the proposed method for controlling stormwater on site;</i> <i>c. the availability of land for disposal of effluent and stormwater on site without adverse effects on adjoining waterbodies (including groundwater and aquifers) or on adjoining-sites or downstream sites; and</i> <i>d. whether low impact design methods and green spaces can be used;</i> <i>e. any cumulative effects on total catchment impermeability; and</i> <p>159. <i>natural hazard mitigation and site constraints.</i></p>



Rule TSL-R3 Residential activity (except for papakāinga)

Matters raised in submissions

160. Submissions S427.038, S338.028, S529.196 and S522.052 from KR Assoc, Our KKC Trust, CN Trust and VKK, support in part rule TSL-R3 and request an amendment to provide for multi-unit developments.
161. There is one further submission which opposes S338.028 (FS409.001) and three further submissions that support the submission (FS570.969, FS566.983).
162. There are three further submissions that support submission S529.196 (FS570.2083, FS566.2097 and FS569.2119).
163. There is one further submission that supports submission S522.052 (FS566.1791).
164. Submission S561.062 from Kāinga Ora opposes rule TSL-R3 and requests that the rule be deleted in its entirety.
165. There are four further submissions in opposition to submission S561.062 (FS32.116, FS409.011, FS47.076 and FS348.149) and one further submission in support of the submission (FS23.334).
166. Submission S339.042 from TACD Ltd supports rule TSL-R3 and requests an amendment to delete PER-2 of the rule as follows:

<i>TSL-R3</i>	<i>Residential activity (except for papakāinga)</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <p><i>On sites less than 1200m², the site area per standalone residential unit or multi-unit development is at least 600m².</i></p> <p><i>PER-2</i></p> <p><i>The number of residential units on any site does not exceed six.</i></p> <p><i>Note: PER-1 and PER-2 do not apply to:</i></p> <ul style="list-style-type: none"> • <i>a single residential unit located on any site less than the minimum site area.</i> • <i>papakāinga provided for in Rule TSL-P4.</i> 	<p><i>Activity status where compliance not achieved with PER-1 or PER-2: Discretionary</i></p>

167. There is one further submission in support of submission S339.042 (FS243.125).



Analysis

168. Submissions S427.038, S338.028, S529.196 and S522.052 request an amendment to rule TSL-R3 to include requirements for outdoor space, including private and shared outdoor space, beyond the area needed to move and park vehicles. I consider that as the submissions refer specifically to Kerikeri and there are no Treaty Settlements and/or Treaty Settlement Land overlay identified in or around Kerikeri at the time of the notification of the PDP, and no specific wording has been provided, I recommend the submissions are rejected.
169. Submission S561.062 opposes rule TSL-R3 and requests its deletion as it considers that papakāinga includes residential activities and therefore this activity is captured under rules *TSL-R4 'Papakāinga'*. I consider that while papakāinga includes residential activity not all housing development on treaty settlement land will be papakāinga, so recommend the submission is rejected.
170. Submission S339.042 considers that rule TSL-R3 PER-2 limits the number of residential units to a maximum of 6 per site irrespective of the carrying capacity of the site. The Tangata Whenua section 32 Report identifies that Treaty Settlement Land is primarily located within the Rural Production zone and Natural Open Space zone. Therefore, these will primarily be the underlying zones. In terms of size of land parcel, the largest number of land parcels are over 40 hectares⁶.
171. However, I consider that there is sufficient opportunity for development potential under TSL-R4 Papakāinga. In addition to this, I consider a more open-ended framework may result in fragmentation of rural land, increase reverse sensitivity risk for rural production activities and loss of rural amenity. Accordingly, I recommend this submission is rejected.

Recommendation

172. For the reasons outlined above, I recommend the following:
- a) Submissions S427.038, S338.028, S529.196 and S522.052 is rejected.
 - b) Submission S561.062 is rejected.
 - c) Submission S339.042 is rejected

Rule TSL-R4 Papakāinga

Matters raised in submissions

⁶ Section 32 Report Tangata Whenua p. 22



173. Submissions S498.072, S390.071 and S486.085 from TRAION, TRON Trust and TROW oppose rule TSL-R4 and seeks an amendment to provide permitted status for greater numbers of houses.
174. There are four further submissions that support or support in part S498.072 (FS151.118, FS23.240, FS409.015 and FS243.119).
175. There is one further submission that supports S390.071 (FS243.105).
176. There is one further submission that supports S486.085 (FS243.112).
177. Submissions S498.073, S390.072 and S486.086 from TRAION, TRON Trust and TROW support the retention of rule TSL-R4 and requests that the rule be amended to provide for more enabling development for papakāinga.
178. There are four further submissions that support or support in part submission S498.073 (FS151.119, FS23.241, FS409.016 and FS243.120).
179. There is one submission that supports submission S390.072 (FS243.105).
180. There is one submission that supports submission S486.086 (FS243.113).
181. Submission S561.063 from Kāinga Ora supports in part rule TSL-R4 and requests an amendment to the rule as follows:

<i>TSL-R4</i>	<i>Papakāinga</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <p><i>The number of residential units does not exceed the greater of:</i></p> <ul style="list-style-type: none"> • 10 residential units per site; or • one residential unit per 40ha of site area. • <i>Use and development can be adequately serviced in terms of stormwater, wastewater and potable water infrastructure.</i> <p><i>PER-2</i></p> <ul style="list-style-type: none"> • <i>Any commercial activity associated with the papakāinga does not exceed a GBA of 250m².</i> 	<p><i>Activity status where compliance not achieved with PER-1 or PER-2: Restricted Discretionary</i></p> <p><i>Matters of discretion are restricted to:</i></p> <p><i>a. The matters set out in policy TSL-P4.</i></p> <p><i>a. consistency with the scale, density, design and character of the planned environment and purpose of the zone;</i></p> <p><i>b. the location, scale and design of buildings and structures;</i></p> <p><i>c. at zone interfaces:</i></p> <p><i>i. any setbacks, fencing, screening or landscaping required to address potential conflicts;</i></p> <p><i>ii. managing reverse sensitivity effects on adjacent land uses, including the ability of surrounding properties to undertake primary production activities in a rural environment;</i></p> <p><i>d. the adequacy and capacity of available or programmed development infrastructure to accommodate the proposed activity; or the capacity of the</i></p>



	<p><i>site to cater for onsite infrastructure associated with the proposed activity;</i></p> <p><i>e. the adequacy of roading infrastructure to service the proposed activity;</i></p> <p><i>f. effects on areas with historic heritage and cultural values, natural features and landscapes, natural character or indigenous biodiversity values; and</i></p> <p><i>g. any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6.</i></p>
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182. There are four further submissions that support or support in part S561.063 (FS36.069, FS409.012, FS354.191 and FS23.335) and three further submissions that oppose the submission (FS32.117, FS47.077 and FS47.077).

183. Submission S339.043 from TACD Ltd supports rule TSL-R4 and requests an amendment to the rule as follows:

<i>TSL-R4</i>	<i>Papakāinga</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <p><i>The number of residential units does not exceed the greater of:</i></p> <ul style="list-style-type: none"> <i>• 10 residential units per site; or</i> <i>• one residential unit per 40ha of site area.</i> <i>• <u>Use and development can be adequately serviced in terms of stormwater, wastewater and potable water infrastructure.</u></i> <p><i>PER-2</i></p> <ul style="list-style-type: none"> <i>• Any commercial activity associated with the papakāinga does not exceed a GBA of 250m².</i> 	<p><i>Activity status where compliance not achieved with PER-1 or PER-2: Restricted Discretionary</i></p> <p><i>Matters of discretion are restricted to:</i></p> <ul style="list-style-type: none"> <i>a. The matters set out in policy TSL-P4.</i>

184. There is one further submission that supports submission S339.043 (FS243.115).

Analysis

185. Submissions S498.072, S390.071 and S486.085 seek an amendment to provide permitted status for greater numbers of houses.

186. I consider that rule TSL-R4, as proposed, provides a more enabling framework for Treaty Settlement land. In addition, the restricted discretionary activity status for papakāinga and commercial development



above the permitted standard. I consider that the notified provisions achieve the intended outcome to make the TSL overlay more enabling and as no specific amendments are sought, I recommend the submission is rejected.

- 187. Submission S561.063 seeks to amend rule TSL-R4 as outlined above in paragraph 181.
- 188. I consider that as I have recommended a rejection of the requested new objective TSL-04 as per submission S561.055, outlined in paragraph 59 above, and the requested new policy TSL-P5 as per submission S561.058, outlined in paragraph 98 above. The term "*adequately serviced*" is broad and open to interpretation. I also consider that the proposed rule as it stands provides for how the objectives of the chapter are to be achieved, including flexibility in the provision of services where appropriate. Accordingly, it is appropriate that this submission is rejected.
- 189. Submission S339.043 seeks to amend rule TSL-R4 as outlined above.
- 190. I consider that as the submission seeks an amendment to PER-1 which is identical to submission S561.063 above, it is appropriate to recommend the submission is rejected for the same reasons as above.

Recommendation

- 191. For the reasons outlined above, I recommend the following:
 - a) Submissions S498.072, S390.071 and S486.085 is rejected.
 - b) Submissions S498.073, S390.072 and S486.086 is rejected.
 - c) Submission S561.063 is rejected.
 - d) Submission S339.043 is rejected.

Rule TSL-R5 Visitor Accommodation

Matters raised in submissions

- 192. Submission S561.064 from Kāinga Ora supports in part rule TSL-R5 and requests the following amendments:

<i>TSL-R5</i>	<i>Visitor Accommodation</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <ul style="list-style-type: none"> • <i>The occupancy does not exceed six guests per night.</i> • <i>Use and development can be adequately serviced in terms of stormwater, wastewater and potable water infrastructure.</i> <p><i>Note: PER-1 does not apply to marae provided for under TSL-R6</i></p>	<p><i>Activity status where compliance not achieved: Discretionary Restricted Discretionary</i></p> <p><i>Matters of discretion are restricted to:</i></p> <ul style="list-style-type: none"> <i>a. consistency with the scale, density, design and character of the planned environment and purpose of the zone;</i> <i>b. the location, scale and design of buildings and structures;</i> <i>c. at zone interfaces;</i>



	<p><i>g. any setbacks, fencing, screening or landscaping required to address potential conflicts;</i></p> <p><i>ii. managing reverse sensitivity effects on adjacent land uses, including the ability of surrounding properties to undertake primary production activities in a rural environment;</i></p> <p><i>d. the adequacy and capacity of available or programmed development infrastructure to accommodate the proposed activity; or the capacity of the site to cater for onsite infrastructure associated with the proposed activity;</i></p> <p><i>e. the adequacy of roading infrastructure to service the proposed activity;</i></p> <p><i>f. effects on areas with historic heritage and cultural values, natural features and landscapes, natural character or indigenous biodiversity values; and</i></p> <p><i>g. any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6.</i></p>
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193. There are three further submissions which support or support in part submission S561.064 (FS36.070, FS409.013 and FS23.336) and there are four further submissions which oppose submission S561.064 (FS32.118, FS354.192, FS47.078 and FS348.151).

Analysis

194. Submission S561.064 requests amendments to TSL-R5 as outlined above.
195. Consistent with responses to previous similar submissions I consider the term "*adequately serviced*" is broad and open to interpretation. In addition, I consider that the proposed rule as it stands provides for how the objectives of the chapter are to be achieved, including flexibility in the provision of services where appropriate.
196. Regarding the requested amendments to the activity status when compliance not achieved, from discretionary to restricted discretion and the insertion of matters of discretion, I consider that as the majority of Treaty Settlement land has an underlying zone of Rural Production or Natural Open Space, it is appropriate for visitor accommodation beyond the permitted standard be able to be assessed against all the objectives and policies. Accordingly, it is appropriate that this submission is rejected.

Recommendation

197. For the reasons outlined above, I recommend the following:
- a) Submission S561.064 is rejected.



Rule TSL-R6 Marae

Matters raised in submissions

198. Submission S339.044 from TACD Ltd supports rule TSL-R6 and its retention.

Analysis

199. Submission S339.044 is acknowledged and accepted.

Recommendation

200. For the reasons outlined above, I recommend the following:

201. Submission S339.044 is accepted.

Rule TSL-R10 Conservation activity

Matters raised in submissions

202. Submission S339.045 from TACD Ltd supports rule TSL-R10 and its retention.

Analysis

203. Submission S339.045 is acknowledged and accepted.

Recommendation

204. For the reasons outlined above, I recommend the following:

205. Submission S339.045 is accepted

Rule TSL-R11 Education Facility

Matters raised in submissions

206. Submissions S486.087, S339.046, S390.073 and S498.074 from TROW, TACD Ltd, TRON Trust and TRAION variously oppose and support rule TSL-R11 and request amendments as follows:

<i>TSL-R11</i>	<i>Educational facility</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <p><i>The educational facility is within a residential unit or accessory building.</i></p> <p><i>PER-2</i></p> <p><i>The number of persons attending at any one time does not exceed four, excluding those who reside on site.</i></p>	<p><i>Activity status where compliance not achieved with PER-1 or PER-2:</i></p> <p><i>Discretionary</i></p>



<p><i>These standards do not apply to: Kōhanga reo, Kura Kaupapa, Whare Wānanga and/or to occupational and outdoor training activities.</i></p>	
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207. There are three further submissions that support or support in part submission S498.074 (FS151.120, FS23.242 and FS409.017).
208. Submission S561.065 from Kāinga Ora supports in part rule TSL-R11 and requests amendments as follows.

<p><i>TSL-R11</i></p> <p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <p><i>The educational facility is within a residential unit or accessory building.</i></p> <p><i>Use and development can be adequately serviced in terms of stormwater, wastewater and potable water infrastructure</i></p> <p><i>PER-2</i></p> <p><i>The number of persons attending at any one time does not exceed four, excluding those who reside on site.</i></p> <p><i>These standards do This rule does not apply to: Kōhanga reo, Kura Kaupapa, Whare Wānanga and/or to occupational and outdoor training activities.</i></p>	<p><i>Educational facility</i></p> <p><i>Activity status where compliance not achieved with PER-1 or PER-2: Restricted Discretionary</i></p> <p><i>Matters of discretion are restricted to:</i></p> <ul style="list-style-type: none"> <i><u>a. consistency with the scale, density, design and character of the planned environment and purpose of the zone;</u></i> <i><u>b. the location, scale and design of buildings and structures;</u></i> <i><u>c. at zone interfaces:</u></i> <ul style="list-style-type: none"> <i><u>i. any setbacks, fencing, screening or landscaping required to address potential conflicts;</u></i> <i><u>ii. managing reverse sensitivity effects on adjacent land uses, including the ability of surrounding properties to undertake primary production activities in a rural environment;</u></i> <i><u>d. the adequacy and capacity of available or programmed development infrastructure to accommodate the proposed activity; or the capacity of the site to cater for onsite infrastructure associated with the proposed activity;</u></i> <i><u>e. the adequacy of roading infrastructure to service the proposed activity;</u></i> <i><u>f. effects on areas with historic heritage and cultural values, natural features and landscapes, natural character or indigenous biodiversity values; and</u></i> <i><u>g. any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6.</u></i>
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209. There are three further submissions that support or support in part submission S561.065 (FS36.071, FS409.014 and FS23.337) and three that oppose the submission (FS32.119, FS47.079 and FS348.152).

Analysis

210. Submissions S486.087, S339.046, S390.073 and S498.074 request that rule TSL-R11 be amended to provide for exceptions to the rule for other Te Ao Māori educational facilities such as Kura Kaupapa, Whare Wananga and/or to occupational and outdoor training activities.
211. I consider that the submission has merit in part and that Kura Kaupapa and Whare Wananga are clearly defined Te Ao Māori educational facilities. However, I consider that the term "*occupational and outdoor training activities*" may be more open to interpretation and their inclusion may lead to unintended consequences. Therefore, I recommend the submission be accepted in part and the amendment read as follows:

<i>TSL-R11</i>	<i>Educational facility</i>
<p><i>Activity status: Permitted</i></p> <p><i>Where:</i></p> <p><i>PER-1</i></p> <p><i>The educational facility is within a residential unit or accessory building.</i></p> <p><i>PER-2</i></p> <p><i>The number of persons attending at any one time does not exceed four, excluding those who reside on site.</i></p> <p><i>These standards do not apply to: Kōhanga Reo, <u>Kura Kaupapa and Whare Wānanga</u></i></p>	<p><i>Activity status where compliance not achieved with PER-1 or PER-2:</i></p> <p><i>Discretionary</i></p>

212. Consistent with responses to previous similar submissions I consider the term "*adequately serviced*" is broad and open to interpretation. I also consider that the amendment sought to PER-2 to have merit in part and that Kura Kaupapa and Whare Wananga are clearly defined Te Ao Māori educational facilities. However, I consider that the term "*occupational and outdoor training activities*" may be more open to interpretation and their inclusion may lead to unintended consequences. Regarding the amendments of the activity status from discretionary to restricted discretion and the insertion of matters of discretion, I consider that as the majority of Treaty Settlement land has an underlying zone of Rural Production or Natural Open Space, it is appropriate for educational facilities beyond the permitted standard be able to be assessed against all the objectives and policies. I consider that rule TSL-R11 as written and with the amendment recommended in paragraph 210 above, achieves the objectives, policies and outcome of enablement and therefore recommend that the submission is also accepted part.



Recommendation

213. For the reasons outlined above, I recommend the following:
- a) Submission S486.087, S339.046, S390.073 and S498.074 is accepted in part.
 - b) Submission S561.065 is accepted in part.

Rule TSL-R12 Commercial activity

Matters raised in submissions

214. Submission S339.047 from TACD Ltd does not state a position and requests that rule TSL-R12 be amended to increase the GBA to align with the permitted impermeable surface coverage provided by rule TSL-R2.
215. There is one further submission that opposes S339.047 (FS354.193).

Analysis

216. Submission S339.047 seeks to increase the GBA of 250m² to align with the permitted impermeable surface coverage provided by rule TSL-R2, which is an impermeable surface coverage of any site of no more than 35%. I consider that the thresholds for GBA or Gross Business Area controls different effects to the thresholds for impermeable surface coverage. It may result in unintended consequences to have a percentage threshold for GBA, such as large commercial buildings on large rural sites. Therefore, I recommend that the submission is rejected.

Recommendation

217. For the reasons outlined above, I recommend the following:
- a) Submission S339.047 is rejected.

Rule TSL-R13 Rural tourism activity

Matters raised in submissions

218. Submission S339.048 from TACD Ltd does not state a position and requests that rule TSL-R13 be amended to delete PER-1 as follows:

<i>TSL-R13</i>	<i>Rural tourism activity</i>
<i>Activity status: Permitted</i> <i>Where:</i> <i>PER-1</i> <i>The rural tourism activity does not exceed a GBA of 250m².</i>	<i>Activity status where compliance not achieved with PER 1: Discretionary</i>



Analysis

219. Submission S339.048 seeks to amend rule TSL-R13 as outlined in paragraph 218. I consider that providing for a Rural Tourism activity within the TSL overlay is appropriate from an economic development perspective but to provide for it as a permitted activity when other activities such as Commercial activity have controls would not be appropriate. Therefore, I recommend that submission is rejected.

Recommendation

220. For the reasons outlined above, I recommend the following:
221. Submission S339.048 is rejected.

Rule TSL-R14 Activities not otherwise listed in this chapter

Matters raised in submissions

222. Submissions S483.192, S363.033, S516.009 and S344.041 from Top Energy Ltd, Foodstuffs, and Ngā Tai Ora, and Paihia Properties either supports rule TSL-R14 or does not state a position. The submitters seek an amendment to the rule in all overlay chapters to ensure consistency with zone chapters.
223. There are two further submissions that support S483.192 (FS78.038 and FS345.243), one further submission that supports in part S516.009 (FS409.019) and one further submission that supports S344.041 (FS396.062).
224. Submission S159.094 from Horticulture New Zealand does not state a position on rule TSL-R14 and seeks the insertion of a new rule TSL-RX Rural Production activities as a permitted activity or to include a rule that specifies that the underlying zone provisions to apply.
225. There are two further submissions in support of S159.094 (FS151.264) and two further submissions that oppose the submission (FS566.270 and FS566.270).

Analysis

226. Submissions S483.192, S363.033, S516.009 and S344.041 requests that rule TSL-R14 be amended to ensure consistency with other zone chapters. As the rule exists in the TSL overlay chapter and states what is requested I consider that the submissions can be accepted in part.
227. Submission S159.094 seeks an amendment to the rule or to include a rule to specify that the underlying zone provisions apply. I acknowledge the point raised that rule TSL-R14 could potentially render an activity not listed in the TSL overlay chapter such as '*Farming activity*' to a discretionary activity. This would be an unintended consequence and not achieve the intended outcome to make the TSL overlay more enabling. In the example



of 'Farming activity', when the underlying zone is Rural Production, rule RPROZ-R7 Farming activity, provides for it as a permitted activity. In addition, while Note 3 in the TSL overlay chapter specifies that "*The provisions of the underlying zone apply to Treaty Settlement Land unless otherwise specified in this section*", I consider it prudent for simplicity and clarity to delete TSL-R14 in its entirety as outlined in **Appendix 1.1**. Accordingly, I recommend the submission is accepted in part.

Recommendation

228. For the reasons outlined above, I recommend the following:
- a) Submissions S483.192 and S363.033 is accepted in part.
 - b) Submission S159.094 be accepted in part.

Rules (general)

229. Submission S359.024 from NRC supports in part the rules in the TSL overlay chapter and requests amendments to the provisions to ensure that the intent of the TSL is unintentionally restricted by policies such as NFL-P5 in the Natural Features and Landscapes chapter.
230. There are six further submissions in support of submission S359.024 (FS23.103, FS409.004, FS570.1060, FS346.485, FS566.1074 and FS569.1096).

Analysis

231. The issue raised in submission S359.024 has been addressed in Hearing 4 Natural Features and Landscapes and is referred to in the s42A report (see below for extract from report). I concur with the analysis and recommendations of the s42A report writer and consider that the issue has been addressed in the amendments to policy NFL-P5 and that this can be relied upon when considering activities in the TSL overlay. Accordingly, I recommend the submission is accepted in part.

Analysis

Policy NFL-P5 reads:

'Provide for the use of Māori Purpose zoned land and Treaty Settlement land in ONL and ONF where land use and subdivision is consistent with the ancestral use of that land and does not compromise any identified characteristics and qualities of ONL and ONF.'

I agree with the submitter. If a policy is to be included providing for the use of land by Māori, then the use should not be constrained to ancestral uses.

RMA section 6(e) requires the district plan to:

"...recognise and provide for... the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga..."

There is no limitation to ancestral use in RMA section 6(e).

I also note the policy direction in Māori Purpose Zone and Treaty Settlement land overlay, which seeks to enable a broader range of activities with the zone and overlay where adverse effects can be avoided, remedied or mitigated.



I have concerns with the use of the words "consistent with" and "does not compromise" in the policy. I address this in Key Issue 6: Objectives, concluding that these phrases should not be used in the NFL chapter because of uncertainty over intent and the fact that this language does not give effect to the NZCPS and RPS.

Accordingly, I recommend the existing policy be replaced with the following:

'Enable land use and subdivision within Māori Purpose zoned land and Treaty Settlement land by recognising that adverse effects on ONL and ONF may be acceptable to support the social, economic and cultural wellbeing of tangata whenua.'

I understand the reporting officer for the Coastal Environment chapter section 42A report is recommending the same new wording for CE-P7.

NFL-P5 will lend weight to allowing adverse effects on ONL and ONF (that may not have otherwise been appropriate), provided the effects are no greater than the adverse effects bottom lines set by NFL-P2 and NFL-P3.

Recommendation

For the above the reasons, I recommend the submissions are rejected, accepted or accepted in part as set out in Appendix 2, and NFL-P5 is amended as follows:

~~'Provide for the use of Māori Purpose zoned land and Treaty Settlement land in ONL and ONF where land use and subdivision is consistent with the ancestral use of that land and does not compromise any identified characteristics and qualities of ONL and ONF outstanding.'~~

'Enable land use and subdivision within Māori Purpose zoned land and Treaty Settlement land by recognising that adverse effects on ONL and ONF may be acceptable to support the social, economic and cultural wellbeing of tangata whenua.'⁷

Recommendation

232. For the reasons outlined above, I recommend the following:

- a) Submission S359.024 is accepted in part.

Section 32AA evaluation

233. I consider that the amending the rules for consistency and making other minor amendments to rules are more appropriate way to achieve the purpose of the RMA than the notified objectives, because they better promote sustainable management by improving the way in which the objectives recognise and provide for section 6(e) and take into account section 8 of the RMA.

5.2.4 Key Issue 4: Standards

Overview

Provision(s)	Officer Recommendation(s)
Standard – TSL-S2	<ul style="list-style-type: none"> • Retain as notified
Standards – TSL-S6	<ul style="list-style-type: none"> • Amend standard

Analysis of Submissions on Key Issue 4

⁷ Section 42A Report Natural Features and Landscapes p.39



New Standard – TSL-S7 Impermeable surfaces

Matters raised in submissions

234. Submission S561.031 from Kainga Ora supports in part the standards in the Treaty Settlement Land overlay chapter and requests the insertion of a new a new standard TSL-S7 as follows:

<i><u>TSL-S7</u></i>	<i><u>Impermeable surfaces</u></i>
<p><i>The impermeable surface coverage of any site is no more than 60%.</i></p> <p><i>Except that:</i></p> <p><i>On sites less than 5000m² containing marae, the impermeable surface coverage is no more than 50%.</i></p>	<p><i>Where the standard is not met, matters of discretion are restricted to:</i></p> <p><i>a. the extent to which landscaping or vegetation may reduce adverse effects of runoff;</i></p> <p><i>b. the effectiveness of the proposed method for controlling stormwater on site;</i></p> <p><i>c. the availability of land for disposal of effluent and stormwater on site without adverse effects on adjoining waterbodies (including groundwater and aquifers) or on adjoining sites;</i></p> <p><i>d. whether low impact design methods and green spaces can be used;</i></p> <p><i>e. any cumulative effects on total catchment impermeability; and</i></p> <p><i>f. natural hazard mitigation and site constraints.</i></p>

235. There are four further submissions that oppose S561.031 (FS32.115, FS354.194, FS47.075 and FS348.148) and two further submissions that support or support in part the submission (FS409.0010 and FS23.333).

Analysis

236. Submission S561.031 considers that impermeable surface coverage is a development control that fits with other standards and not as a rule. I consider that the insertion of a new standard for impermeable surfaces as outlined above to be unnecessary as the PDP has addressed the issue of impermeable surfaces as an activity and through a rule in each of the zones. The Treaty Settlement Land overlay is consistent in this regard and has addressed impermeable through rule TSL-R2. Therefore, I recommend this submission point is rejected.



Recommendation

237. For the reasons outlined above, I recommend the following:

- a) Submission S561.031 is rejected.

Standard – TSL-S2 Height in relation to boundary

Matters raised in submissions

238. Submission S431.158 from John Andrew Riddell does not state a position on standard TSL-S2 and requests the retention of the approach and an amendment to vary the required height to boundary depending on the orientation of the relevant boundary. No wording has been provided.

239. There is one further submission in support of submission S431.158.

Analysis

240. Submission S431.158 does not provide any rationale or wording for varying the required height to boundary depending on the orientation of the relevant boundary. Therefore, I recommend the submission is rejected.

Recommendation

241. For the reasons outlined above, I recommend the following:

- 242. Submission S561.031 is rejected.

Standard – TSL-S6 On-site services

Matters raised in submissions

243. Submission S339.049 from TACD Ltd does not state a position on standard TSL-S6 and requests that the standard be amended as follows:

TSL-S6	On-site services
<p><i>Wastewater</i></p> <p><i>1. Where a connection to Council's reticulated wastewater systems is not available:</i></p> <p><i>a. any residential unit has a minimum exclusive use area of 2,000m² for on-site wastewater treatment and disposal.</i></p> <p><i>b. all wastewater treatment and disposal systems must be contained within the site that the system serves, and be connected to a septic tank or soakage field or</i></p>	<p><i>Where the standard is not met, matters of discretion are restricted to:</i></p> <p><i>a. the ability to ensure an adequate supply of potable water for the uses of the site or activity;</i></p> <p><i>b. the security of any proposed potable water supply from contamination;</i></p> <p><i>c. the adequacy of storage volume of water for</i></p>



<p>an approved alternative means to dispose of sewage in a sanitary manner in accordance with Far North District Council Engineering Standards April 2022.</p> <p>c. where sewage is to be disposed to ground, the receiving area must not be:</p> <p>i. land susceptible to instability; or</p> <p>ii. an area identified in the District Plan as subject to inundation; or</p> <p>used for the disposal of stormwater.</p> <p>a. site suitability report for on-site wastewater disposal, prepared by a suitably qualified and experienced person, to demonstrate compliance with the above standards, shall be submitted to Council for approval at time of building consent.</p> <p><i>Water</i></p> <p><i>2. Where a connection to Council's reticulated water systems is not available, all residential units shall have access to potable (drinkable) water from a community water scheme or private water bore or shall be able to store 45,000 litres of potable water from another source.</i></p> <p><i>Stormwater</i></p> <p><i>3. Where a connection to Council's reticulated stormwater system is not available then stormwater must be disposed of in accordance with Far North District Engineering Standards 2022.</i></p>	<p><i>domestic and fire-fighting purposes; and</i></p> <p><i>d. the ability to ensure the avoidance of soil contamination or any other adverse effects from the discharge of any wastewater or stormwater.</i></p>
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244. Submission S512.039 from FENZ supports in part standard TSL-S6 and the inclusion for the provision of water for firefighting as well as potable water as outlined below:



TSL-S6	On-site services
<p><i>Wastewater</i></p> <p><i>1. Where a connection to Council's reticulated wastewater systems is not available:</i></p> <p><i>a. any residential unit has a minimum exclusive use area of 2,000m² for on-site wastewater treatment and disposal.</i></p> <p><i>b. all wastewater treatment and disposal systems must be contained within the site that the system serves, and be connected to a septic tank or soakage field or an approved alternative means to dispose of sewage in a sanitary manner in accordance with Far North District Council Engineering Standards April 2022.</i></p> <p><i>c. where sewage is to be disposed to ground, the receiving area must not be:</i></p> <p><i>iii. land susceptible to instability; or</i></p> <p><i>iv. an area identified in the District Plan as subject to inundation; or used for the disposal of stormwater.</i></p> <p><i>b. site suitability report for on-site wastewater disposal, prepared by a suitably qualified and experienced person, to demonstrate compliance with the above standards, shall be submitted to Council for approval at time of building consent.</i></p> <p><i>Water</i></p> <p><i>2. Where a connection to Council's reticulated water systems is not available, all residential units shall have access to potable (drinkable) water and access to water supplies for firefighting in accordance with the alternative firefighting water source provisions of SNZ PAS</i></p>	<p><i>Where the standard is not met, matters of discretion are restricted to:</i></p> <p><i>e. the ability to ensure an adequate supply of potable water for the uses of the site or activity;</i></p> <p><i>f. the security of any proposed potable water supply from contamination;</i></p> <p><i>g. the adequacy of storage volume of water for domestic and fire-fighting purposes; and</i></p> <p><i>h. the ability to ensure the avoidance of soil contamination or any other adverse effects from the discharge of any wastewater or stormwater.</i></p>



<p><i>4509:2008, from a community water scheme or private water bore or shall be able to store 45,000 litres of potable water from another source.</i></p> <p><i>Stormwater</i></p> <p><i>3. Where a connection to Council's reticulated stormwater system is not available then stormwater must be disposed of in accordance with Far North District Engineering Standards 2022.</i></p>	
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Analysis

245. Submission S339.049 requests amendments to standard TSL-S6 as outlined in paragraph 243 above.
246. Submissions on the Engineering Standards approach in the PDP were considered in Key Issue 1 of the Section 42A Engineering Standards report. It has been identified in this report that the current approach of incorporating the Engineering Standards by reference and requiring compliance in accordance with the standards has several issues.⁸ The report author, Ms Sarah Trinder, has recommended decoupling the Engineering Standards and the PDP.⁹ Technical advice has been sought on this matter from Tom Kiddle - Senior Civil Engineer at Beca **Appendix 3** . Specifically in relation to the proposed amendments to TSL-S6 and in relation to submission point S339.049, whereby it is stated that the amended proposed standard adequately addresses the engineering – related relief sought by these submitters .The amendments to the standard as shown in **Appendix 1.2** provide for the permissive approach to development while safeguarding environmental and human health risks through three waters management associated with land development. Accordingly, I recommend submission S339.049 be accepted in part.
247. Submission S512.039 requests an amendment to standard TSL-S6 as outlined above in paragraph 244. I consider that this relief is already addressed through the following district wide provisions in the PDP:
248. Natural Hazards chapter – NH-R5 Wild fire – Buildings used for a vulnerable activity (excluding accessory buildings) and NH-R6 Wild fire – extensions and alterations to buildings used for a vulnerable activity (excluding accessory buildings) that increase the GFA. These rules include a specific requirement to have water supply for firefighting purposes that comply with SNZ PAS 4509:2008 NZ Fire Fighting Water Supplies Code of Practice.

⁸ Section 42A Report Engineering Standards p.10

⁹ Section 42A Report Engineering Standards p.12, para. 55



249. Accordingly, I recommend the submission is rejected.

Recommendation

250. For the reasons outlined above, I recommend the following:

- a) Submission S339.049 is accepted in part.
- b) Submission S512.039 is rejected.

Section 32AA evaluation

251. I consider that the amendments to the standards that I have recommended are a more appropriate way to achieve the purpose of the RMA than the notified standards, because they better promote sustainable management by improving the way in which the objectives recognise and provide for section 6(e) and take into account section 8 of the RMA.

5.2.5 Key Issue 5: General / Plan content / Miscellaneous

Overview

Provision(s)	Officer Recommendation(s)
Treaty Settlement Land overlay	<ul style="list-style-type: none"> • Retain as notified

Analysis of Submissions on Key Issue 4

General / Plan content / Miscellaneous -Treaty Settlement Land overlay

Matters raised in submissions

- 252. Submissions S390.065, S498.066, S486.015, S486.079, S511.106, S339.033, and S442.125 from TRON Trust, TRAION, TROW, Forest & Bird, TACD Ltd and KC Trust support or support in part the Treaty Settlement Land overlay and request it be retained.
- 253. There are two further submissions that support submission S498.066 (FS151.112 and FS23.234), four further submissions that support S511.106 (FS164.106, FS570.1677, FS566.1691 and FS569.1713) and one further submission that supports S442.125 (FS346.736).
- 254. Submissions S379.001 and S379.003 from Kahukuraariki Trust opposes the Treaty Settlement Land overlay and requests amendments that are more enabling for treaty settlement land.
- 255. Submission S383.001 from Trustees of Jet#2 Trust supports in part the Treaty Settlement Land overlay and requests the planning framework and provision to address concerns relating to potential conflicts with objectives creating sporadic use or development which were raised in the submission. No wording has been provided.
- 256. There is one further submission which opposes S383.001 (FS409.003).



Analysis

257. Submissions S390.065, S498.066, S486.015, S486.079, S511.106, S339.033 and S442.125 are acknowledged and accepted.
258. Submissions S379.001 and S379.003 acknowledge that the objectives and policies seek to enable the use and development of treaty settlement land, but this intent is limited by the overlay, rules and standards which highlight that the ODP is more favourable than the PDP.
259. The Treaty Settlement Land overlay is intended to be an "enabling" overlay. Note 3 of the Treaty Settlement Land overlay reads:
"The provisions of the underlying zone apply to Treaty Settlement Land unless otherwise specified in this section. The rules provide that where the activity for the relevant zone provides for the same activity, or where there is conflict between a rule or standard in the underlying zone chapter, the less restrictive rule applies."
260. The approach is intended to provide for the use and development of Treaty Settlement Land, specifically for the activities that are listed as permitted in the Treaty Settlement Land overlay rules (including residential, papakainga, visitor accommodation, marae, community facilities, customary activities, urupa, commercial activities up to 250m² GBA, educational facilities and rural tourism activities). I consider that the provisions in the Treaty Settlement Land overlay are more favourable than the underlying zone in the PDP and the Operative District Plan. For example, in the scenario of a 10 residential unit papakāinga development on a 10-ha site that has a Treaty Settlement land overlay with an underlying zone of Rural Production. In the PDP it would be a permitted activity provided it complied with all the standards in the TSL-R1 and the district wide provisions. In the PDP it would be a restricted discretionary activity in the underlying zone of Rural Production provided it complied with all the standards and the district wide provisions. In the Operative Plan it would be a discretionary activity under the Integrated Management rule. As no amendments have been sought, I recommend the submissions are rejected.
261. Submission S383.001 seek amendments to the planning framework and provisions that address concerns relating to sporadic use and development. However, as no wording has been provided and the relief sought is unclear, I recommend the submission is rejected.

Recommendation

262. For the reasons outlined above, I recommend the following:
- a) Submissions S390.065, S498.066, S486.015, S486.079, S511.106, S339.033 and S442.125 are accepted.
 - b) Submission S379.001 and S379.003 are rejected.



c) Submission S383.001 is rejected.

5.2.6 Key Issue 6 Treaty Settlement Land Overlay Mapping

Overview

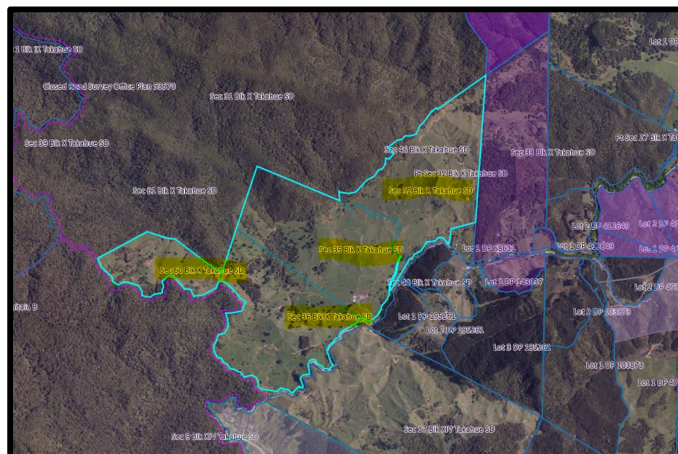
Provision(s)	Officer Recommendation(s)
Mapping	<ul style="list-style-type: none"> TSL overlay mapping does not apply to Ngamaia Farms so no changes required
Mapping	<ul style="list-style-type: none"> Remove TSL overlay mapping from Section 1 SO 65376
Mapping	<ul style="list-style-type: none"> Apply TSL overlay mapping Section 6-7 Block IV Houhora West Survey District
Mapping	<ul style="list-style-type: none"> TSL overlay mapping does not apply to Part Allot 25 PSH OF Totara so no changes required

Analysis of Submissions on Key Issue 5

Matters raised in submissions

263. Submission S3.002 from Ngamaia Farms Ltd opposes the Treaty Settlement Land overlay as applied to the parcels identified in the table and map extract below:

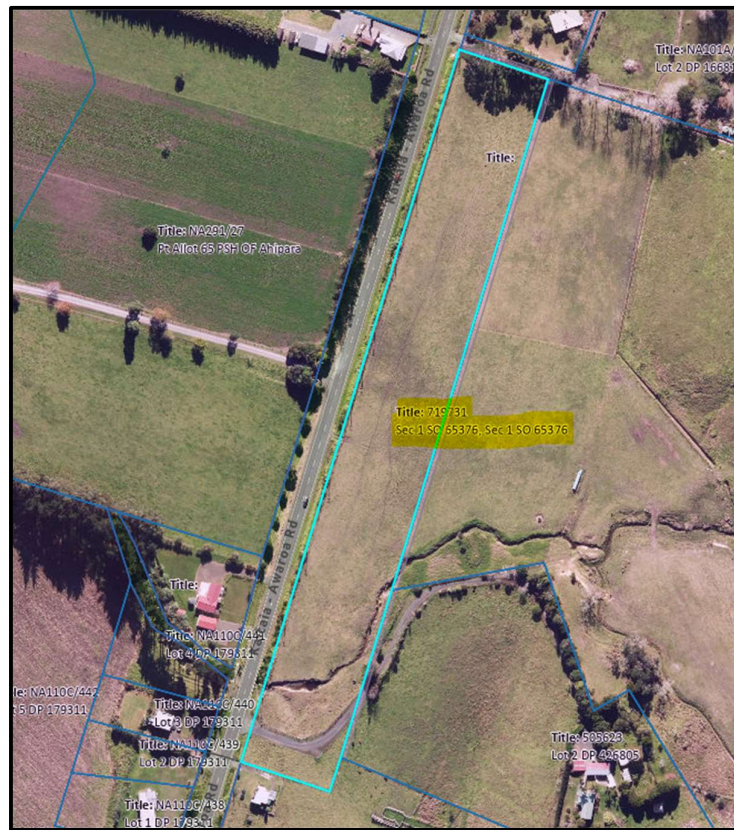
Title	Legal Description	Address
NA48C/1396	Section 60 Block X Takahue Survey District	1479 Diggers Valley Road, Kaitaia District
NA30A/294	Section 52 and Part Section 32 Block X Takahue Survey District	1479 Diggers Valley Road, Kaitaia District
NA1034/213	Section 36 Block X Takahue Survey District	1479 Diggers Valley Road, Kaitaia District
NA26A/1387	Section 35 and Section 40 Block X Takahue Survey District	1479 Diggers Valley Road, Kaitaia District





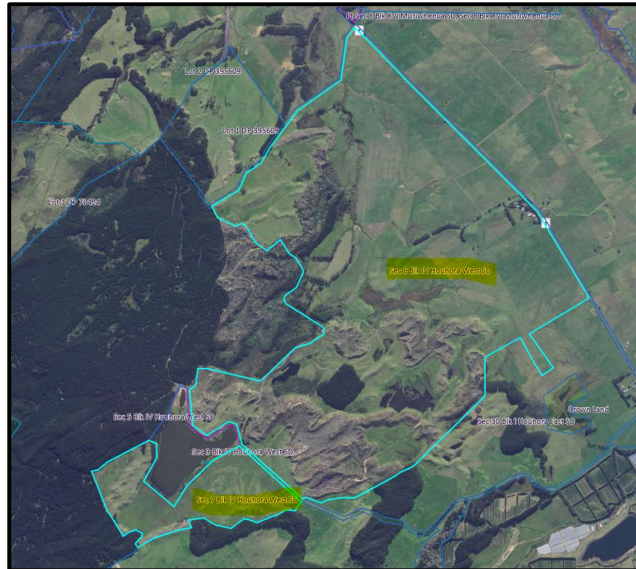
264. Submission S178.002 from Reuben Wright opposes the Treaty Settlement Land overlay as applied to the parcel identified in the table and the map extract below:

Title	Legal Description	Address
719731	Section 1 SO 65376	Kaitaia-Awaroa Road, Kaitaia



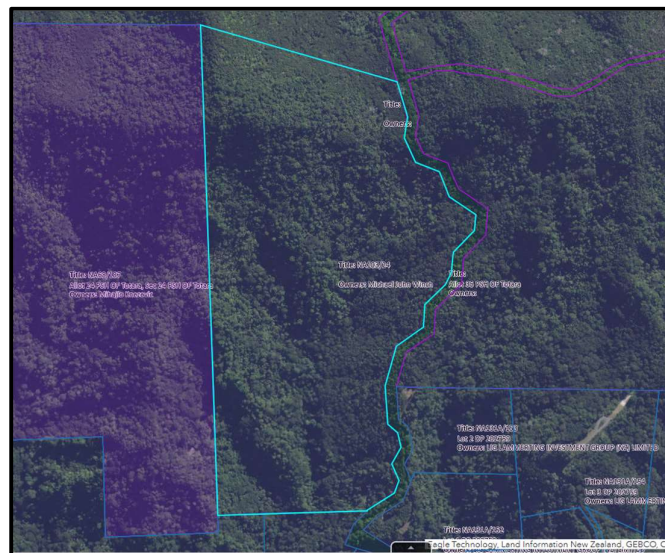
265. Submission S339.058 from TACD Ltd does not state a position but requests an amendment to the PDP maps to identify the parcel identified in the table and the map extract below as Treaty Settlement Land overlay:

Title	Legal Description	Address
NA75B/196	Section 6-7 Block IV Houhora West Survey District	5891 Far North Road, Ngataki



266. Submission S67.008 from Michael John Winch opposes the Treaty Settlement overlay as it applies to the parcel identified in the table and the map extract below and seeks an amendment to the PDP maps to remove the overlay.

Title	Legal Description	Address
NA103/24	Part Allot 25 PSH OF Totara	Wairakau Road, Kaeo

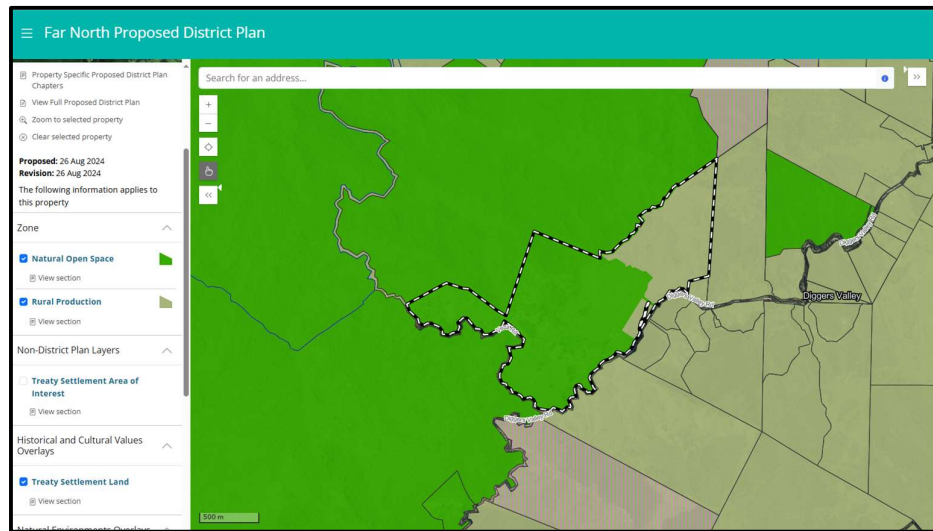


267. There is one further submission in support of S67.008 (FS346.831) and one in opposition (FS566.057).

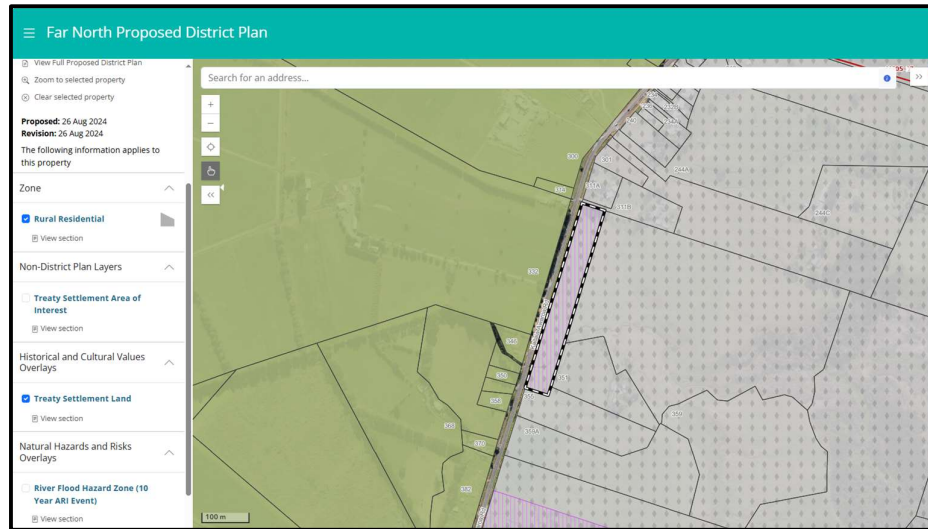
Analysis



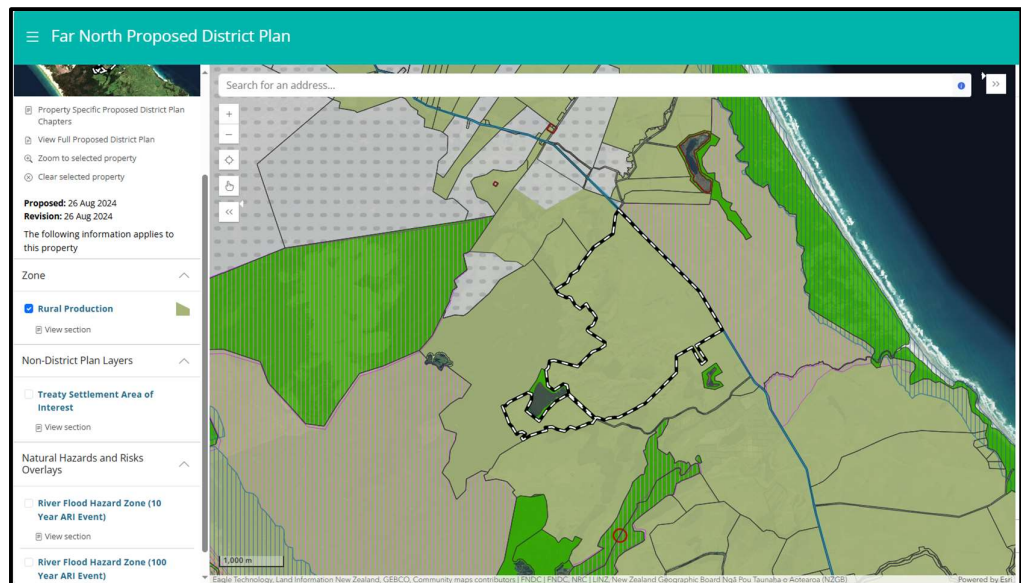
268. Submission S3.002 considers that the Treaty Settlement Land overlay mapping has been applied incorrectly to the parcels identified above in paragraph 263 and requests that the mapping be removed. An investigation of the PDP e-map indicates that the Treaty Settlement Land overlay has not been applied to the Ngamaia Land parcels, albeit that there is a parcel with the Treaty Settlement Land overlay applied, adjoining (see below for extract). Therefore, I recommend that the maps not be amended to remove the Treaty Settlement Land overlay from the parcel and that the submission be rejected.



269. Submission S178.002 considers the Treaty Settlement Land overlay mapping has been applied incorrectly to the parcels identified above and requests that the mapping be removed as the land was sold to the current owner by the Hapū / Iwi which received the land as part of a treaty settlement. An investigation of the PDP e-map indicates that the Treaty Settlement Land overlay has been applied to the parcel identified (see below for extract). A search of records identifies that the current owners of the parcel as OMC 2018 Ltd, a private company and not a Post Settlement Governance. Therefore, I recommend that maps be amended to remove the Treaty Settlement Land overlay from the parcel and that the submission be accepted.



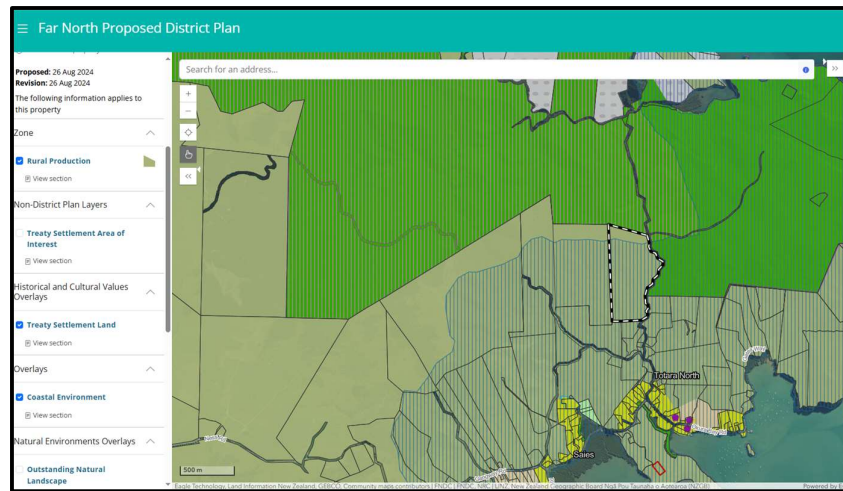
270. Submission S339.058 considers that the Treaty Settlement Land overlay has not been applied to the parcel identified above and seeks that the Treaty Settlement Land overlay be applied to the parcel as it is owned and managed by TACD Ltd, a commercial subsidiary of Te Rūnanga Nui o Te Aupōuri, a Post Settlement Governance Entity. An investigation of the PDP e-map indicates that the Treaty Settlement Land overlay has not been applied to the parcel identified (see below for extract). An investigation into the Te Aupōuri Deed of Settlement has been unable to confirm if this property is Treaty Settlement Land as per the PDP definition. As such TACD Ltd may wish to bring this evidence to the hearing. However, at this stage and based on existing information, I recommend that this submission point is rejected.



271. Submission S67.008 considers that the Treaty Settlement Land overlay mapping has been applied incorrectly to the parcels identified above in



paragraph 266 and requests that the mapping be removed. An investigation of the PDP e-map indicates that the Treaty Settlement Land overlay has not been applied to the parcel, see below for extract. Therefore, I recommend that the maps not be amended to remove the Treaty Settlement Land overlay from the parcel and that the submission be rejected.



Recommendation

272. For the reasons outlined above, I recommend the following:
- a) Submission S3.002 is rejected.
 - b) Submission S178.002 is accepted.
 - c) Submission S339.058 is rejected.
 - d) Submission S67.008 is rejected.

Section 32AA evaluation

273. I consider that the amendments to the mapping that I have recommended are more appropriate way to achieve the purpose of the RMA than the notified objectives, because they better promote sustainable management by improving the way in which the objectives recognise and provide for section 6(e) and take into account section 8 of the RMA.

5.2.7 Key Issue 7: Treaty Settlement Land overlay – Notes and Applications Subject to Multiple Provisions’ in Part 1 Introduction and General Provisions / How the Plan Works / General Approach

Overview

Provision(s)	Officer Recommendation(s)
Note 1	<ul style="list-style-type: none"> • Make minor changes to Note 1 to correct a typographical error
Note 3	<ul style="list-style-type: none"> • Retain Note 3 as notified



Provision(s)	Officer Recommendation(s)
Note 3	<ul style="list-style-type: none"> Insert Note 3 into paragraph Applications Subject to Multiple Provisions

Analysis of Submissions on Key Issue 6

Matters raised in submissions

274. Submissions S339.001 and S483.023 from TACD Ltd and Top Energy Ltd do not state a position on the issue of Treaty Settlement Land overlay – Note 3 and *'Applications Subject to Multiple Provisions'* in Part 1 Introduction and General Provisions / How the Plan Works / General Approach but seeks an amendment to provide clear direction that the Treaty Settlement Land overlay and provisions prevail over the underlying zone provisions where an activity or standard is provided.
275. There are 10 further submissions in support of S339.001 (FS111.002, FS369.003, FS403.014, S511.106, FS164.106, FS570.1677, FS566.1691, FS569.1713, S442.125, FS346.736).
276. There are 13 further submissions which support or support in part submission S483.023 (FS67.33, FS67.34, FS68.36, FS69.35, FS66.54, FS78.032, FS351.006, FS371.006, FS111.011, FS111.014, FS449.006, FS403.046, and FS345.074).
277. Submissions S368.039, S148.041 from FNDC and Summit supports in part or does not state a position on Notes and seeks an amendment to correct a typo in the note.
278. There are two submissions that oppose S148.041 (FS346.547 and FS566.153).
279. Submission S148.042 from Summit supports the retention of Note 3 as currently worded.
280. There are two further submissions that oppose S148.042 (FS346.548 and FS566.154).

Analysis

281. Submissions S339.001 and S483.023 seek clarity in the *'Applications Subject to Multiple Provisions'* paragraph of the *'How the Plan Works'* section of Part 1 Introduction and General Provisions. Submission S339.001 was referred to in the Section 42A Report – Part 1 and General/Miscellaneous, the s42A report writer deferred the submission to the Treaty Settlement Land overlay hearing¹⁰. Hence, it's consideration here and the necessity to include Appendix 1.2 – Officers Recommended Amendments to General approach Chapter.

¹⁰ Section 42A Report Part 1 and General/Miscellaneous p.23, para 106



282. Case law determines that one provision cannot 'prevail' over another, however I consider that as the intention of the TSL overlay is to be more enabling there is merit in providing more clarity in the 'How the Plan Works' section of Part 1 Introduction and General Provisions. I recommend that the submissions be accepted in part an amendment be made to insert Note 3 in the 'Applications Subject to Multiple Provisions' paragraph of the section as follows:

Applications Subject to Multiple Provisions

*The overall activity status of a proposal will be determined on the basis of **all rules which apply to the proposal**. This includes rules in the District-Wide Matters and Area-Specific Matters. When a proposal involves several activities that are subject to multiple rules with different activity statuses, and/or involves an activity/activities across multiple zones, precincts, areas, overlays or features, and it is appropriate to "bundle" the activities, **the proposal will be assessed on the basis of the most restrictive activity status, (unless otherwise stated) (see paragraph below regarding Treaty Settlement Land overlay). If a proposal is subject to one or more provisions, that have a permitted activity status the proposal will need to comply with all the provisions and their standards.***

In the case that rules have the same status such as the activity is permitted in the Rural Production zone and the Coastal environment overlay the activity will need to meet all the standards within these permitted rules.

*'In the case of the Treaty Settlement Land overlay, as Note 3 in the chapter identifies, the provisions of the underlying zone apply unless otherwise specified. The rules provide that where the activity for the relevant zone provides for the same activity, or where there is conflict between a rule or standard in the underlying zone chapter, the less restrictive rule applies.'*¹¹

Where a rule for an overlay, zone or precinct controls an activity by reference to a proportion or percentage of the site, the control will be limited to that part of the site to which the overlay or zone applies.

Some of the Overlay chapters only include rules for certain types of activities (e.g. natural character, natural features and landscapes or coastal environment). If your proposed activity is within one of these overlays, but there are no overlay rules that are applicable to your activity, then your activity can be treated as a permitted activity under the Overlay Chapter unless stated otherwise. Resource consent may still be required under other Part 2: District-Wide Matters chapters and/or Part 3: Area-Specific chapters (including the underlying zone).

An application for resource consent for a proposal must address all rules under which consent is required for that proposal under the District Plan and all relevant matters, or must clearly set out the reason why the application is not in relation to all such matters.

Application forms and detailed guidance on how to make an application and the information that is to be submitted with an application are available on the Council website.

283. Submissions S368.039, S148.041 seek an amendment to correct a minor error therefore I recommend the submission be accepted and the amendment made as follows:

Notes:

- 1. There may be rules in other District-Wide Matters that apply to a proposed activity, in addition to the rules in this chapter. These other rules may be more stringent than the*

¹¹ TACD Ltd (S339.001)



rules in this chapter. Ensure that the other relevant District-Wide Matters chapters are also referred to, in addition to this chapter, to determine whether resource consent is required under other rules in the District Plan. Refer to Note 2 above, and the how the plan works chapter to determine the activity status of a proposed activity where resource consent is required under multiple rules.

2. The following provisions apply to land identified by the Treaty Settlement land overlay. Applicants may need to provide documentation in the form of final deeds of settlement, associated settlement legislation and confirmation that the land is still held with the post-settlement governance entity.

3. The provisions of the underlying zone apply to Treaty Settlement Land unless otherwise specified in this section. The rules provide that where the activity for the relevant zone provides for the same activity, or where there is conflict between a rule or standard in the underlying zone chapter, the less restrictive rule applies.

284. Submission S148.042 is acknowledged and accepted.

Recommendation

285. For the reasons outlined above, I recommend the following:

- a) Submissions S339.001 and S483.023 is accepted in part.
- b) Submissions S368.039 and S148.041 is accepted.
- c) Submission S148.042 is accepted

Section 32AA evaluation

286. I consider that the amendments to the that I have recommended to 'Notes' and 'Applications Subject to Multiple Provisions' in Part 1 Introduction and General Provisions / How the Plan Works / General Approach, are a more appropriate way to achieve the purpose of the RMA than notified because they better promote sustainable management by improving the way in which the Notes and Applications Subject to Multiple Provisions provide clarity.

6 Conclusion

287. This report has provided an assessment of submissions received in relation to the Treaty Settlement Land overlay chapter. The primary amendments that I have recommended relate to:

- a) Retain Treaty Settlement Land overlay as notified.
- b) Amend objectives to improve clarity and intention.
- c) Amend policies for consistency.
- d) Include more exceptions and titles to rules.
- e) Mapping changes to correct errors and omissions.
- f) Changes to the Notes and Applications Subject to Multiple Provisions.to assist plan users.
- g) Minor corrections to address drafting errors



288. Section 4.6 considers and provides recommendations on the decisions requested in submissions. I consider that the submissions on the Treaty Settlement Land overlay chapter should be accepted, accepted in part, rejected or rejected in part, as set out in my recommendations of this report and in Appendix 2.
289. I recommend that provisions for the Treaty Settlement Land overlay matters be amended as set out in the Treaty Settlement Land overlay in Appendix 1.1 below for the reasons set out in this report

Recommended by: Theresa Burkhardt, Senior Policy Planner, Far North District Council.

A handwritten signature in blue ink, appearing to be "Theresa Burkhardt", written over a faint, light blue grid background.

Approved by: James R Witham – Team Leader District Plan, Far North District Council.

Date: 24 February 2025